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CANADIAN ARCHIVES

DOCUMENTS

RELATING TO

THE CONSTITUTIONAL HISTORY OF CANADA

1759-1791

SELECTED AND EDITED WITH NOTES BY

ADAM SHORTT

Professor of Political Science Queen's University

AND

ARTHUR G. DOUGHTY

Dominion Archivist.

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INTRODUCTION.

Already the accumulation of materials relating to Canadian history secured by the Canadian Archives is very voluminous, and of such range and value that it will henceforth be impossible to make any considerable contribution to Canadian history without drawing upon these resources.

Now that these collections are adequately housed in a separate building, it is possible for all who wish to consult them to do so with facility and comfort. However, in a country of such vast extent as Canada, it requires both time and means for more than a very limited number to avail themselves of these valuable accumulations at first hand. Hitherto, also, the pressing demands of the more immediate needs of life leave, for most, little leisure for the cultivation of those studies connected with the origin and significance of our national institutions, the right comprehension of which may have an important bearing on the future stability of national life.

In order that the character of the records accumulated by the Archives department may be made known to the public, and that the advantages to be derived from an acquaintance with these materials may be equally shared by teachers, students and citizens of Canada generally, in all parts of the country, it has been considered advisable to select and publish in a connected form, a number of the more important and representative documents relating to specific features of Canadian national development. The present volume is the first of a short series which will embody the leading documents relating to Canadian constitutional history. The collection is intended to furnish, in the shape of authentic copies of original documents, a survey of the gradual development of the Canadian system of government and of the various forces which, in co-operation or conflict, had much to do with determining the lines along which our destiny as a nation was to be unfolded. It has been sought to make the series of documents sufficiently full and representative of all the constituent elements and interests of the country, to furnish a basis for an intelligent and independent judgment on the part of those making a careful study of them; while the notes and references will enable the reader to follow the natural connections of the documents with each other and with a still wider range of first hand materials, most of which will also be found in the collections of the Canadian Archives.

This first volume contains only documents relating to the central portion of Canada known at the time as the Province of Quebec, between the period of the Cession and the passing of the Constitutional Act in 1791. In order to present a natural historical development of the constitution, the documents are arranged as nearly as possible in chronological order. They consist of both primary and secondary materials. The primary documents are preceded and followed by a number of closely related papers, such as petitions, reports, letters and proceedings indicative of the forces which prepared the way for the more formal expressions of the general policy or system of government. These in turn are followed by other secondary documents showing the practical consequences of the adoption of this or that policy or system of government.

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The documents and papers may be classified as follows, the first two sections covering the central or pivotal documents.

I. Terms of Capitulation and Treaties, determining the limits of the colony and the conditions under which it was ceded or held.

II. Royal Proclamations, or British Statutes determining the basis and character of the government to be established and maintained in the colony.

III. Commissions and Instructions issued to the various Governors, giving in further detail the system of government and administration to be established in the colony, and the general policy to be followed.

IV. Such ordinances or laws passed by the local legislative body as prescribe, under the authority of Royal Proclamations or British Statutes and Instructions to the Governors, the courts of law and the general system of justice to be administered in the colony.

V. Special reports, of a more or less official nature, from various Boards, or servants of the Crown in Britain or Canada, setting forth the actual conditions of the country, from a constitutional point of view, and proposing lines of policy or necessary changes in the constitution of the country.

VI. A body of miscellaneous papers, furnishing the connecting links and general constitutional atmosphere of the central documents of the foregoing classes. These consist of

(*a*) Petitions and counter-petitions expressing the wishes and aspirations of the inhabitants of the country, or of those in Britain having special interests in Canada, as to the form of government, the system of laws, and the general administration of justice.

(*b*) Minor reports from the Governors and other officials in the colony, Memorials and Proceedings setting forth the political condition of the country, Minutes of Council and Reports of Committees of Council relating to the system of government or administration.

(*c*) Correspondence, official, semi-official, or private, between the Canadian Governors and the British Secretaries of State, and between these and others occupying official or at least influential positions in Canada or Britain, discussing, shaping, or advising as to the policy of government, or the condition and wishes of the people.

In considering the documents presented under these various classes, the question of most interest to those wishing to make use of the volume will relate to the principle or principles upon which the documents here given were selected from the general mass of materials bearing upon the constitutional development of Canada during the period covered. In answering this question we may take up the sections in order.

The documents which fall within the first three classes leave very little room for choice, as they are limited in number and definite in character. The first section includes the Capitulations of Quebec and Montreal, and the two Treaties of Paris of 1763 and 1783. Section II includes the Proclamation of 1763, the Quebec Act and the Constitutional Act. Section III includes the Commissions and Instructions to Governors, &c. In order to economize space, since the Commissions cover, though only in a partial degree, much the same ground as the Instructions, samples only are given to indicate their nature. Special features, such as Dorchester's Commission in 1786 to be Governor

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and Commander in Chief in all the British North American Colonies, are fully indicated in the correspondence and notes. Where the Instructions to one Governor are continued for his successor with little or no alteration, they are not repeated in full, only the alterations or additions being given. However, where important changes in policy were being discussed or had taken place, as in 1768, 1775, and 1786, the Instructions are given in full, even though considerable sections of them remain unchanged, it being important at such periods to see the relation of the old to the new elements. This section includes also various additional or special Instructions which were issued to the Governors during their periods of Office.

Section IV. covers the series of Provincial Ordinances from 1764 to 1789, establishing the Provincial Courts and prescribing, subject to the British Statutes and Instructions, the system of law and procedure to be observed therein.

In Section V. there is more choice of materials, though there is little difficulty in determining which are the most essential documents, as that is largely indicated by the importance attached to them alike at the time and afterwards, as evidenced by the repeated references to them in the other documents and correspondence of the period. The only difficulty here has been in procuring authentic copies of all the documents of this description referred to. Though the great majority of these reports have been discovered among the State Papers, or in other authentic form, a few of them have not as yet been secured. The Reports of Carleton and Hey in 1769 have not yet been found, though the substance of the former is fairly well indicated in the criticism of it made by Mr. Maseres, (see p. 258). This indicates that the Governor had simply recapitulated in the Report his views as frequently expressed to the Home Government in his correspondence with the Secretaries of State, Lords Shelburne and Hillsborough. It has also been impossible up to the present to trace among the State Papers the reports on the Government of Quebec made by Solicitor-General Wedderburn and Attorney-General Thurlow, in 1772 and 1773, though a supplement to the Solicitor-General's report containing its essential features has been found among the Dartmouth Papers. We have therefore been constrained to take these papers in their incomplete form from Christie's History of Lower Canada, Vol. I. The Report of the Board of Trade of September 2nd, 1765, cited in another report of the same date, given at p. 171 and referred to in note 3 on the same page, as not having been discovered, has since come to light in a volume lately received at the Archives but as yet uncalendared. It will be found in Volume Q—18A, p. 131. These are practically the only cases in which we have failed to trace the more essential documents of this class.

The reports in this Section, beginning with that of Murray in 1762 and ending with the series of Reports of 1787, where they are of a general nature, naturally contain much material which has but little direct bearing on constitutional questions. However, where the report is homogeneous and not too voluminous, as in the case of Murray's, it has been produced in full, that the reader may be enabled to obtain a general survey of the conditions of the Colony. In other cases, where the report is very extensive and is the product of a series of committees dealing with different sections of the colonial interests, as in the case of the Report of 1787, only those sections are given which have a more direct bearing on the constitutional problems of the country. At the same time the general character of the whole report is sufficiently indicated, and

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references are given which will enable any one who may be interested in them to follow up the portions omitted.

It is among the documents classified under Section VI. that there is the largest and most miscellaneous mass of materials from which to make choice, and here the principle of selection is naturally a matter of considerable importance, for much necessarily depends upon the judgment of the editor. Inasmuch as feeling ran high at various stages during this period, and questions of racial and national institutions, feudal privileges and vested interests, commercial enterprise and immigration, military versus civil power, and autocratic versus democratic government were deeply involved; and inasmuch as many of the questions then raised for the first time have persisted as matters of vital interest in Canadian politics and British colonial policy, it is highly necessary that the principles on which the selection of the supplementary documents has been made should be fully understood. Obviously, whatever the final judgment on any of these issues, it is quite indispensable in a volume of this description that all the representative interests in the Colony, all the essential claims made and policies advocated, should be fairly and adequately presented in their own terms, as far as the documents are available. The first process was to sift out from the general documents of the period and set apart for further consideration all those having either a direct or an indirect bearing upon the constitutional issues of the period. Then from these were selected for publication (*a*) Those which were specially referred to in the primary documents, or were used in shaping them; (*b*) Those petitions and memorials which were most frequently referred to either by friends or opponents as representing the wishes of the various sections of the people interested in the Constitution of Canada; (*c*) Those despatches and letters passing between Canada and Britain which originated ideas and policies afterwards followed up, or which most fully discussed the issues then before the country, and which were most frequently referred to afterwards as expressing the views of the persons or groups vitally interested in the measures proposed or adopted; (*d*) Such minor documents as were intimately connected with or obviously throw light upon the more important ones, and contribute to a better understanding of them.

By following these principles of selection it was found that the documents arranged themselves in a natural and connected order of development, and furnished in great measure their own standards for selection. As a consequence of this arrangement, we have been able to include the great majority of the papers referred to in the primary and secondary documents, including the petitions, memorials and official correspondence. Hence, with the assistance of the notes and supplementary references, if the documents are read consecutively, they will be found to gradually unfold a closely connected and intelligible story of the leading constitutional issues and of the factors, personal and corporate, determining the constitutional development of Canada during a very critical and highly controversial period in our national history.

It has been regarded as beyond the scope of a volume of this description to take notice of the voluminous discussion in periodicals, pamphlets, and historical treatises dealing with the issues here presented whether from a partisan or impartial point of view. However valuable much of this material may be, it is plainly to be treated as supplementary reading. The object of this volume is simply to furnish the more central

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and essential documentary bases, alike for original and independent judgment and for an intelligent estimate of all other judgments, whether contemporary or subsequent.

The most essential portion of the supplementary reading consists of the Debates in the British Parliament connected with the passing of the Quebec Act and the Constitutional Act. These are naturally too voluminous to be included in their entirety. To make selections from them, and especially from the Debates on the Quebec Act, which would be satisfactory to all parties would prove a very difficult if not impossible undertaking. References to the Debates are given in the notes, and as they are available in every fairly equipped library, they may be consulted in their complete form by practically all who care to make a serious study of these matters.

The notes throughout the volume are entirely devoted to furnishing necessary concrete information as to the documents themselves, the connecting links between them, or the supplementary documents which throw additional light on the questions in hand. No attempt however has been made to pass judgment upon the issues involved, or to give an interpretation of the documents themselves. The functions of the notes may thus be classified as follows: *(a)* To furnish the necessary references to the sources of the documents which are reproduced; *(b)* To furnish references, either within or without the present volume, to all other papers referred to in the documents here reproduced; *(c)* To provide references to other first-hand materials, and to give quotations from them, where not too extensive, as to the essential links connecting or explaining the documents which have been selected and reproduced; *(d)* To indicate the official positions held by the leading parties between whom the correspondence which is given had taken place.

A number of the central and more formal documents, such as Capitulations, Treaties, and Instructions have already appeared in various forms, though not always in authentic versions. Others have appeared in volumes which are now very difficult to obtain and are rarely to be met with in Canada outside of a few of the best equipped Libraries. A large part of the volume, however, consists of important documents which have not hitherto been published, and the very existence of a number of which was hardly suspected. These throw much new light on some of the most essential features of Canadian constitutional history.

In every possible case documents are taken from the most authentic sources available, and are reproduced exactly as they are found, without any attempt to correct even the most obvious errors of spelling, punctuation or grammatical form. It is evident that any uncertainty due to slips and errors in the original documents would only be increased were it understood that attempts had been made to amend them.

The majority of the papers here reproduced are contained in the Canadian Archives, and consist of copies from the originals in the Public Record Office in London. In some cases, however, the papers in the Public Record Office are themselves duplicates which were furnished at the time of framing the originals. In almost every case these documents have been again carefully compared with the originals before being reproduced in this volume, and the proof has been read by Mr. R. Laidlaw and Miss M. Robertson.

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It will be observed that the papers are drawn mainly from three series, which are designated by the letters Q, B and M. This method of classification was originally adopted by the Canadian Archives as an arbitrary though convenient mode of reference, otherwise these letters have no special significance. The index to the volume was prepared by Miss M. Robertson of the Archives Branch.

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ARTHUR G. DOUGHTY.

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DOCUMENTS

RELATING TO

THE CONSTITUTIONAL HISTORY OF CANADA

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DOCUMENTS RELATING TO THE CONSTITUTIONAL HISTORY OF CANADA

1759-1791

ARTICLES OF CAPITULATION, QUEBEC. [1]

La Capitulation demandée d'autre part a été accordée par Son Excellence General Townshend Brigadier des armees de sa Majeste Britanique en Amerique de la Maniere & aux conditions exprimées cy dessous

Articles de Capitulation demandés Par M^{r} de Ramzay Lieutenant Pour Le Roy Commandant Les hautes et Basse Ville de Quebec Ch^{er} de L'ordre Royal & Militaire de S^{t} Louis à Son Excellence Monsieur Le General des troupes de Sa Majesté Britannique.

[1] The Articles of Capitulation of Quebec as here given are taken from a photographic reproduction of the original document, signed by Admiral Charles Saunders, Brigadier General George Townshend and M. de Ramesay, which was enclosed in Townshend's despatch to Pitt of the 20th Sept., 1759, giving the official account of the capture of Quebec. The despatch and the enclosed Articles of Capitulation are preserved in the Public Record Office, London, in Vol. 88 of the papers relating to 'America and the West Indies.' In his despatch General Townshend thus alludes to the Capitulation :—'The 17th at noon before we had any Battery erected or could have had any for 2 or 3 days. A Flagg of Truce came out with proposals of Capitulation, which I sent back again to Town allowing them four Hours to capitulate or no farther Treaty. * * The French Officer returned at night with Terms of Capitulation which with the Admiral were consider'd, agreed to, and signed, at 8 in y^{e} morning y^{e} 18th instant. The Terms you find we granted will I flatter myself be approved of by his Majesty considering y^{e} Enemy assembling in our Rear, & what is far more formidable The very Whet & Cold Season which threatened our Troops with Sickness & the fleet with some Accident. It had made our Road so bad we could not bring up a Gun for some time, add to this y^{e} advantage of entring y^{e} Town with the walls in a Defensible State, and y^{e} being able to put a Garrison there strong enough to prevent all Surprise. These I hope will be deem'd a sufficient Consideration for granting y^{e} them. Terms I have the Honour to propose to you.'

Admiral Saunders, in a letter to Pitt at the same time, also states, 'I enclose you a Copy of the Articles of Capitulation.' Negotiations for the capitulation appear to have commenced immediately after the battle of the Plains on the 13th of September, as Montcalm addressed a letter to Townshend on that day, in which he acknowledged that he was compelled to surrender. On the 14th, M. de Ramesay received a communication from the British Commander referring to the arrangements for carrying out the truce; but the death of Montcalm which occurred on the same day seems to have interrupted the proceedings. There are several variations in the wording alike of the French text and of the English translation, or version of the Articles of Capitulation, as given by different authorities. Some of these are from French sources, others from English. As indicative of the variations in British official sources we may take the following versions of the introductory clauses of the Capitulation :

Articles de Capitulation demandées par M^{r} de Ramzay Lieutenant pour le Roy, Commandant les Hautes et Basses Villes de Québec, Chevalier de l'Ordre Royal et Militaire de S^{t} Louis, à Son Excellence Monsieur le Général des Troupes de Sa Majesté Britannique : La Capitulation demandée d'autre Part a été accordée par Son Excellence General Townshend, Brigadier des Armes de Sa Majesté Britannique en Amerique, de la Maniere et aux Conditions exprimées cy-dessous :

(Papers relative to the Province of Quebec, ordered to be printed 21st April 1791. Copied in Canadian Archives, Q. 62 A, Pt. 1, p. 103.)

ARTICLES DE CAPITULATION

Demandée par M. de Ramsay, Lieutenant pour le Roi, commandant les Haute et Basse-villes de Québec, Chef de l'ordre militaire de St. Louis, à son Excellence le Général des Troupes des sa Majesté Britannique.—"La Capitulation demandée de l'autre part, a été accordée par son Excellence lAmiral Saunders, et son Excellence le Général Townshend, &c. &c. &c. de la manière et condition exprimée ci-dessous."

(Capitulations and Extracts of Treaties Relating to Canada; with His Majesty's Proclamation of 1763, establishing the Government of Quebec. p. 3. Printed by Willian Vondenvelden, Law Printer to the King's Most Excellent Majesty. 1797.)

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La garnison de la ville Composée des troupes de terre de marinne et matelots sortiront de la ville avec armes et Bagages Tambour Battant meche allumée avec deux pieces de Canon de france Et douze Coups atirer pour chaque piece Et sera Embarqué le plus Commodement possible pour etre mise en france au premier port.

ARTICLE PREMIER

Mr de Ramzay demande Les honneurs de la guerre Pour sa Garnison & qu'Elle soit ramenée à L'armée En sureté par Le Chemin Le plus Court, avec armes, bagages, six pieces de Canon de fonte, Et deux mortiers ou obusiers et Douse coups à tirer par piece

2.

Accordé en mettant les armes Bas

ART. 2.

Que Les habitans soient Conservés dans La possession de leurs maisons, biens, effets et privileges.

3.

accordé—

ART. 3.

Que Les dits habitans ne pourront etre recherchés pour avoir porté Les armes à la deffense de la ville, attendu qu'ils y ont été forcés & que les habitans des Colonies des deux couronnes y servent Egalement comme Milices.

4.

accordé—

ART. 4.

Qu'il ne sera pas touché aux effets des officiers & habitans absens

5.

accordé—

ART. 5.

Que les dits habitans ne seront point transferés, ni tenus de quitter Leurs maisons Jusqu'à ce qu'un traité definitif entre S. M T. C. & S. M. B. aye reglé leur etat.

6.

libre Exercice de la Religion Romaine. sauves gardes accordées a toutes personnes Religieuses ainsi qua Mr Leveque qui pourra venir Exercer Librement et avec Decence Les fonctions de son Etat lorsqu'il le Jugera a propos jusqu a ce que la possession du Canada ayt été Decidée entre Sa Majesté B. et S. M. T. C.

ART. 6.

Que L'Exercice de La relligion Catholique apostolique & romaine sera conservé, que L'on Donnera des sauve gardes aux maisons des Ecclesiastiques, relligieux & relligieuses particulierement à Mgr L'Evêque de Quebec qui, rempli de zele pour La relligion Et de Charité pour le peuple de son Diocese desire y rester Constamment, Exercer Librément & avec La Decense que son Etat et les sacrés mysteres de la relligion Catholique Apostolique & Romaine, Exigent, son Authorité Episcopale dans La ville de Quebec Lorsqu'il Jugera à propos, Jusqu'à ce que la possession Du Canada ait Eté decidée par vn traité Entre S. M. T. C. & S. M. B.

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7.	ART. 7.
accordé—	Que L'artillerie & les Munitions de guerre seront remises de bonne foy et Qu'il en sera Dressé un Inventaire.
8.	ART. 8.
accordé—	Qu'il En sera un pour Les Malades, blessés, Commissaire, Aumoniers, Medecins, Chirurgiens, Apoticaires & autres personnes Employés au service des hopitaux Conformement au traité d'échange du 6. fevrier 1759. Convenu Entre Leurs M. T. C. & B.
9.	ART. 9.
accordé—	Qu'avant de livrer La porte & l'entrée de La ville aux troupes Angloises, leur general voudra bien remettre quelques soldats pour Etre mis en sauve gardes Aux Eglises, couvents & principales habitations.
10.	ART. 10.
accordé	Qu'il sera Permis au Lieutenant de Roy commandant dans La ville de Quebec d'Envoyer Informer M^{r} Le Marquis de Vaudreuil Gouverneur General de La reddition de La place, Comm'aussi que Ce General pourra Ecrire au Ministre de france pour L'en Informer.
11.	ART. 11.
accordé	Que La presente Capitulation sera Executée suivant sa forme & teneur sans qu'elle puisse Etre sujette à Inexecution sous pretexte de represailles ou D'vne Inexecution de Quelque Capitulation precedente.

Le present traité a été fait et arreté Double entre Nous au Camp devant Quebec le 18^{e} Septembre 1759

CHA : SAUNDERS.
GEO : TOWNSHEND.
DERAMESAY

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(Translation.) [1]

ARTICLES OF CAPITULATION

Demanded by Mr. de Ramsay, the King's Lieutenant, commanding the high and low Towns of Quebec, Chief of the military order of St. Lewis, to His Excellency the General of the troops of His Britannic Majesty.— —"The Capitulation demanded "on the part of the enemy, and granted by their Excellencies Admiral Saunders "and General Townshend, &. &c. &c. is in manner and form hereafter expressed."

I.

Mr. de Ramsay demands the honours of war for his Garrison, and that it shall be sent back to the army in safety, and by the shortest route, with arms, bagage, six pieces of brass cannon, two mortars or howitzers, and twelve rounds for each of them.—"The "Garrison of the town, composed of Land forces, marines and sailors, shall march out "with their arms and bagage, drums beating, matches lighted, with two pieces of french "cannon, and twelve rounds for each piece; and shall be embarked as conveniently as "possible, to be sent to the first port in France."

II.

That the inhabitants shall be preserved in the possession of their houses, goods, effects, and privileges.—"Granted, upon their laying down their arms."

III.

That the inhabitants shall not be accountable for having carried arms in the defence of the town, for as much as they were compelled to it, and that the inhabitants of the colonies, of both crowns, equally serve as militia.—"Granted."

IV.

That the effects of the absent officers and citizens shall not be touched.—"Granted."

V.

That the inhabitants shall not be removed, nor obliged to quit their houses, until their condition shall be settled by their Britannic, and most Christian Majesties.—"Granted."

VI.

That the exercise of the Catholic, Apostolic and Roman religion shall be maintained; and that safe guards shall be granted to the houses of the clergy, and to the monasteries, particularly to his Lordship the Bishop of Quebec, who, animated with zeal for religion, and charity for the people of his diocese, desires to reside in it constantly, to exercise, freely and with that decency which his character and the sacred offices of the Roman religion require, his episcopal authority in the town of Quebec, whenever he shall think proper, until the possession of Canada shall be decided by a treaty between their most Christian and Britannic Majesties.—"The free exercise of the roman religion is granted, "likewise safe-guards to all religious persons, as well as to the Bishop, who shall be at "liberty to come and exercise, freely and with decency, the functions of his office, when-"ever he shall think proper, until the possession of Canada shall have been decided "between their Britannic and most Christian Majesties."

[1] The French text of the Articles of Capitulation being the official one, there is no authoritative English version. The English text here given follows that contained in "Capitulations and Extracts of Treaties Relating to Canada," already cited, and which corresponds to the French text there given. This version, as regards the British concessions, is practically identical with that contained in Knox's "Historical Journal of the Campaigns in North America." Vol. II, p. 87, as also in the "Annual Register" for 1759, p. 247. The version contained in "Papers Relative to the Province of Quebec," of 1791, differs slightly from these.

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VII.

That the artillery and warlike stores shall be faithfully given up, and that an inventory of them shall be made out,—" Granted."

VIII.

That the sick and wounded, the commissaries, Chaplains, Physicians, Surgeons, Apothecaries, and other people employed in the service of the hospitals, shall be treated conformably to the cartel of the 6th of February, 1759, settled between their most Christian and Britannic Majesties.—" Granted."

IX.

That before delivering up the gate and the entrance of the town to the English troops, their General will be pleased to send some soldiers to be posted as safe-guards upon the churches, convents, and principal habitations.—" Granted."

X.

That the King's Lieutenant, commanding in Quebec, shall be permitted to send information to the marquis de Vaudreuil, Governor General, of the reduction of the place, as also that the General may send advice thereof to the french Ministry. " Granted."

XI.

That the present capitulation shall be executed according to its form and tenour, without being subject, to non-execution under pretence of reprisals, or for the non-execution of any preceding capitulations.— —" Granted."

Duplicates hereof taken and executed by, and between us, at the camp before Quebec, this 18th Day of September, 1759.

CHARLES SAUNDERS,
GEORGE TOWNSHEND,
DE RAMSAY.

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ARTICLES OF CAPITULATION, MONTREAL.[1]

COPIE :

Articles de Capitulation Entre Son Excellence Le General Amherst Commandant en Chef Les Troupes & Forces de Sa Majesté Britanique En L'Amerique Septentrionale, Et Son Excellence Le M^{is} de Vaudreüil, Grand Croix de L'Ordre Royal, et Militaire de S^{t} Louis, Gouverneur et Lieutenant Général pour Le Roy en Canada.

ART : 1er

Vingt quatre heures après La Signature de la présente Capitulation, Le Général Anglois fera prendre par Les Troupes de Sa Majesté Britanique, possession des portes de La Ville de Montreal et La Garnison Angloise ne poura y Entrer qu'après L'Evacuation des Troupes Francoises.

Toute la Garnison de Montreal doit mettre bas les Armes, et ne Servira point pendant la presente Guerre; immediatement après la Signature de la presente, les Troupes du Roy prendront possession des Portes, et posteront les Gardes necessaires pour maintenir le bon Ordre dans La Ville.

ART : 2.

Les Troupes et les Milices qui seront en Garnison dans La Ville de Montreal, En Sortiront par la porte de avec

[1] The Articles of Capitulation of Montreal as here given, are taken from the copy enclosed in the despatch of General Amherst to Pitt, dated "Camp of Montreal." 8th Sept., 1760, as contained in Vol. 93 of the papers relating to "America and the West Indies," in the Public Record Office. Another text is given in the "Capitulations and Extracts of Treaties Relating to Canada." 1797. In his despatch to Pitt, Gen. Amherst thus alludes to the circumstances of the capitulation:—"7th in the morning two Officers came to an advanced Post with a Letter from the Marquis de Vaudreuil, referring me to what one of them, Le Colonel Bouguinville, had to say." (Proposing a truce for a month.) "The conversation ended with a Cessation of Arms' till twelve o'clock, at which time the Proposals came. I returned mine, and wrote to the Marquis de Vaudreuil, this was followed by another letter from the Governour, I sent my Answer; I then received a Letter from Monsieur de Levis which I answered. The Troops lay on their Arms at Night, and soon after day I had a Letter from the Marquis de Vaudreuil, which I answered, and sent Major Abercrombie into Town, to bring me the Articles of Capitulation, signed by the Marquis de Vaudreuil, of which I have sent him a duplicate, signed by me, and Colonel Haldimand with the Grenadiers and Light Infantry of the Army has taken possession of a Port and will proceed tomorrow in fulfilling the Articles of Capitulation. * * * I enclose to you, Sir, a Copy of the Articles of Capitulation with Copys of all the Letters that have passed for your full information of the whole Tranaction."

An account of the proceedings connected with the Capitulation of Montreal, from the French side, is given in a document entitled "Suite de la Campagne en Canada"; 1760, in the "Collection de Documents Relatifs à l'Histoire de la Nouvelle-France." Quebec, 1885, vol. IV., pp. 304-6. From this, among other French documents relative to this event, we learn that on the evening of Sept. 6th, the Marquis de Vaudreuil summoned the leading officers of the land and marine forces to meet at his quarters to discuss the general situation and consider terms of capitulation which had been drawn up and which were read by the Intendant Bigot. The impossibility of any longer maintaining a successful resistance was generally acknowledged, and M. de Bougainville was commissioned to propose to General Amherst, on the morning of the 7th, a general cessation of hostilities, awaiting possible news of a peace between the two countries. But, should Amherst not agree, he was authorized to propose the terms of capitulation which had been read before the council of war. The 7th was occupied with these negotiations, the submission of the French terms, and the reception of General Amherst's reply. During the evening of that day there took place a vigorous interchange of views verbal and written, between the Chevalier de Lévis and his chief officers, on the one hand, and the Marquis de Vaudreuil, on the other, in which the officers strenuously objected to the conditions imposed by Amherst and advocated a desperate resistance in the hope of securing better terms for the army. Vaudreuil, however, refused to sacrifice the general welfare of the colony in a futile support of the professional pride of the officers. Hence, notwithstanding his vigorous protests, Lévis was ordered to submit to the terms prescribed by Amherst. Although Vaudreuil appears to have acted for the best, his course was severely criticized by the French Court at the time.

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tous les honeurs de la Guerre, Six pieces de Canon, et Un Mortier, qui seront Chargés dans Le Vaisseau oû Le Marquis de Vaudreüil Embarquera, avec dix Coups à tirer par piece. Il En sera Usé de même pour la Garnison des trois Rivieres pour les honeurs de la Guerre.

ART : 3.

Toutes ces Troupes ne doivent point servir pendant la presente Guerre, et mettront pareillement les Armes bas ; le Reste est Accordé.

Les Troupes et Milices qui seront en Garnison dans le Fort de Jacques Cartier, Et dans L'Isle S^{te} Helene, & Autres Forts, seront traittée, de même Et auront les mêmes honeurs ; Et ces Troupes Se rendront à Montreal, oû aux 3 Rivieres, ou à Quebec, pour y Estre toutes Embarquées pour le premier port de Mer en France, par le plus Court Chemin. Les Troupes qui sont dans nos postes Sitüés sur Nos Frontieres, du Costé de L'Accadie, au Détroit, Michilimakinac, et Autres postes, joüiront des mêmes honeurs et seront Traittées de même.

ART : 4.

Accordé.

Les Milices, après Estre Sorties des Villes et des Forts et Postes Cydessus, retourneront Chez Elles, sans pouvoir Estre Inquiettées, Sous quelque prétexte que ce soit, pour avoir porté Les Armes.

ART : 5.

Ces Troupes doivent comme les Autres, mettre bas les Armes.

Les Troupes qui Tiennent la Campagne Leveront leur Camp, Marcheront, Tambour battant, Armes, bagages et avec leur Artillerie, pour Se joindre à La Garnison de Montreal, Et auront en tout le même Traitement.

ART : 6.

Refusé.

Les Sujets de Sa Majesté Britanique Et de Sa Majesté Très Chretienne, Soldats, Miliciens, ou Matelots, qui auront Désertés, oû Laissé Le Service de leur Souverain, et porté Les Armes dans L'Amerique Septentrionale Seront de part et d'autre pardonés de leur Crime ; Ils seront respectivement rendus à leur patrie ; Sinon Ils resteront chacun ou Ils sont, sans qu'ils puissent Estre recherchés ni Inquiettés.

ART : 7.

C'est tout ce qu'on peut demandér sur Cette Article.

Les Magazins, L'Artillerie, Fusils, Sabres, Munitions de Guerre et généralement tout ce qui apartient à S. M. T. C. Tant dans les Villes de Montreal et 3 Rivieres, que dans

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les Forts et Postes Mentionés en L'Article 3, Seront Livrés par des Inventaires Exacts, aux Comissaires qui seront préposés pour les reçevoir au Nom de S. M. B.—Il sera remis au M^is de Vaudreüil des Expeditions en bonne forme des d : Inventaire.

ART : 8.

Les Malades et Blessés seront Traité de même que Nos propres Gens.

Les Officiers, Soldats, Miliciens, Matelots, et Même Les Sauvages détenus pour Cause de leurs Blessures, oú Maladie, tant dans les hopitaux que dans les Maisons particulieres, Joüiront des priviléges du Cartel, et Traittés Conséquament.

ART : 9.

Le premier Refusé — Il n'y a point eu des Cruautes Commises par les Sauvages de Nôtre Armée : Et le bon Ordre sera maintenu.

Le Général Anglois S'Engagera de renvoyer chez Eux Les Sauvages Indiens, Et Moraigans qui font Nombre de Ses Armées, d'abord aprés La Signature de La presente Capitulation, Et Cependant pour prévenir tous désordres de la part de Ceux qui ne Seroient pas partis, Il sera donné par le Général des Sauve-Gardes aux personnes qui En demanderont, tant En Ville que dans les Campagnes.

ART : 10.

Repondu par L'Article precedent.

Le Général de Sa Majesté Britanique garentira tous desordres de la part de Ses Troupes ; Les assujettira à payer les domages qu'Elles pouroient faire, tant dans les Villes que dans les Campagnes.

ART : 11.

Le Marquis de Vaudreuil, Et tous ces Messieurs seront Maitres de leurs Maisons, et s'Embarqueront dès que les Vaisseaux du Roy seront prêts à faire Voile pour l'Europe : Et on leur accordera toutes les Commodités qu'on pourra.

Le Général Anglois ne poura obliger Le M^is de Vaudreüil de Sortir de la Ville de Montreal avant le Et on ne poura Loger personne dans Son hôtel Jusques à Son départ M. Le Ch^er Levis Comandant Les Troupes de Terre ; Les Officiers principaux, Et Majors des Troupes de Terre et de la Colonie, Les Ingenieurs, Officiers d'Artillerie, et Comissaire des Guerres, resteront pareillement à Montreal jusqu'au d. Jour, Et y Conserveront leurs Logemens. Il En Sera Usé de même à L'Egard de M. Bigot Intendant, des Comissaires de La Marine, Et Officiers de plume dont mon d : S. Bigot aura besoin : Et on ne poura Egalement Loger personne à L'Intendance avant Le départ de Cet Intendant

ART : 12.

Accordé ; Excepté les Archives qui pouront Etre ne-

Il sera destiné pour le passage en droiture au premier port de Mer en france, du M^is de

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Vaudreüil, Le Vaïsseau Le plus Comode qui Se trouvera : Il y sera pratiqué Les Logemens Necessaires pour Lui, Mad^{e} La Marquise de Vaudreüil, M. de Rigaud, Gouverneur de Montreal, Et La Suitte de ce Général. Ce Vaisseau sera pourvû de Subsistances Convenables aux dépens de Sa $M^{té}$ Britanique, Et Le M^{is} de Vaudreüil Emportera avec Lui Ses papiers, Sans qu'ils puissent Estre Visités, Et Il Embarquera Ses Equipages, Vaisselle, bagages, Et Ceux de Sa Suitte.—

cessaires pour le Gouvernement du païs.

ART : 13.

Si avant oú aprés L'Embarquement du M^{is} de Vaudreüil, La Nouvelle de la paix arrivoit, Et que par Le Traitté Le Canada resta à Sa $M^{té}$ T. C. Le M^{is} de Vaudreüil reviendroit à Quebec, ou à Montreal :— Toutes Choses rentreroient dans leur premier Estat sous la domination de Sa $M^{té}$ T. C. Et La présente Capitulation deviendroit Nulle et sans Effet quelconques.

Ce que Le Roy pouroit avoir fait à ce Sujet, sera Obéi.

ART : 14.

Il sera destiné deux Vaisseaux pour le passage en France de M. Le Ch^{er} de Levis, des Officiers principaux, Et Estat Major Général des Troupes de Terre ; Ingenieurs, Officiers d'Artillerie, Et Gens qui sont à leur Suitte. Ces Vaisseaux seront Egalement pourvûs de Subsistances ; Il y sera pratiqué Les Logemens necesaires. Ces Officiers pouront Emporter leurs papiers, qui ne Seront point Visités ; Leurs Equipages et Bagages.— Ceux de Ces Officiers qui Seront Mariés auront La Liberté d'Emmener avec Eux leurs Femmes et Enfans, Et la Subsistance leur Sera fournie.

Accordé : Excepté que M. Le M^{is} de Vaudreüil, et tous les Officiers de quelque Rang qu'ils puissent être Nous remettrons de bonne foy toutes les Cartes et plans du Païs.

ART : 15.

Il En Sera de même destiné Un pour Le passage de M^{r} Bigot Intendant et de Sa Suitte, dans lequel Vaisseau, Il sera fait les aménagemens Convenables, pour lui, Et les personnes qu'il Emmenera. Il y Embarquera Egalement Ses papiers, qui ne Seront point Visités, Ses Equipages, Vaisselle, et bagages, et Ceux de Sa Suitte. Ce Vaisseau Sera pourvû de Subsistances Comme Il est dit Cy devant.

Accordé ; avec la même reserve que par l'Article precedent.

ART : 16.

Le Général Anglois fera aussi fournir pour M. de Longueüil Gouverneur des 3. Rivieres, pour les Estats Majors de La Colonie, Et Les Comissaires de La Marine, Les Vaisseaux

Accordé—.

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necessaires pour se rendre En france, Et le plus Comodement qu'il Sera possible; Ils pouront y Embarquer Leurs Familles Domestiques, bagages, et Equipages; Et la Subsistance leur Sera fournie pendant la Traversée sur un pied Convenable, aux dépens de Sa M^té^ Britanique.

ART : 17.

Accordé—.

Les Officiers et Soldats, Tant des Troupes de Terre, que de La Colonie, ainsi que les Officiers Marins et Matelots, qui se trouveront dans la Colonie, seront aussi Embarqués pour France, dans les Vaisseaux qui leur Seront Destinés, En Nombre Sufisant, et Le plus Comodement que faire se poura... Les Officiers de Troupes et Marins, qui seront mariés pouront Emmener avec Eux leurs Familles; Et tous auront La Liberté d'Embarquer leurs Domestiques et Bagages, Quant aux Soldats et Matelots, Ceux qui Seront Mariés pouront Emmener avec Eux Leurs Femmes et Enfans, Et tous Embarqueront leurs havre Sacs et Bagages.—Il Sera Embarqué dans ces Vaisseaux Les Subsistances Convenables et sufisantes aux dépens de Sa M^té^ Britanique.

ART : 18.

Accordé.

Les Officiers, Soldats, et tous Ceux qui sont à la Suitte des Troupes, qui auront leurs Bagages dans les Campagnes, pouront les Envoyer Chercher avant leur départ, Sans qu'il leur Soit fait aucun Tort, ni Empeschement.

ART : 19.

Accordé.

Il Sera fourni par le Général Anglois un Batiment d'hopital pour Ceux des Officiers, Soldats & Matelots, blessés ou Malades, qui seront En Estat d'Estre transportés En france, Et la Subsistance Leur Sera Egalement fournie aux dépens de Sa M^té^ Britanique: Il En Sera Usé de même à L'Egard des Autres Officiers, Soldats, et Matelots, blessés, ou Malades, aussitost qu'ils Seront rétablis. Les Uns et les Autres pouront Emmener Leurs Femmes, Enfans, Domestiques, et Bagages; Et les d: Soldats et Matelots ne pouront Etre Sollicités, ni forcés à prendre parti dans Le Service de Sa M^té^ Britanique.

ART : 20.

Accordé—.

Il Sera Laissé un Comissaire, et un Ecrivain de Roy pour avoir Soin des hopitaux, et Veiller à tout ce qui aura raport au Service de Sa M^té^ Très Chretienne.

ART: 21.

Le General Anglois fera Egalement fournir des Vaisseaux pour Le passage en france des Officiers du Conseil Superieur, de Justice, police, de L'Amirauté, et tous Autres Officiers ayant Comissions oú Brevets de Sa M[té] Tres Chretienne, pour Eux, leurs Familles, Domestiques, et Equipages, Comme pour les Autres Officiers: Et La Subsistance leur Sera fournie de même aux dépens de Sa M[té] Britanique.—Il leur Sera Cependant Libre de rester dans la Colonie, S'ils le Jugent apropos, pour y arranger Leurs Affaires, ou de Se retirer En france, quand bon Leur Semblera.

Accordé, mais s'ils ont des papiers qui concernent le Gouvernement du païs, Ils doivent Nous les remettre.

ART: 22.

S'il y a des Officiers Militaires dont les Affaires Exigent leur présence dans la Colonie Jusqu'a L'Année prochaine, Ils pouront y rester, aprés En avoir eu La permission du M[is] de Vaudreüil, Et sans qu'ils puissent Estre réputés Prisoniers de Guerre.

Tous Ceux dont les Affaires particulieres exigent qu'ils restent dans le païs, et qui en ont la permission de M. Vaudreüil, seront permis de rester Jusqu'a ce que leurs Affaires soient terminées.

ART: 23.

Il sera permis au Munitionaire des Vivres du Roy, de demeurer en Canada Jusqu'a L'Année prochaine pour Estre En Estat de faire face aux dettes qu'il a Contractées dans la Colonie, relativement à Ses fournitures; Si néantmoins Il préfere de passer En france cette Année Il sera obligé de Laisser Jusques à L'Année prochaine Une personne pour faire Ses Affaires. Ce particulier Conservera et poura Emporter tous Ses papiers, Sans Estre Visités... Ses Comis auront La Liberté de rester dans La Colonie, ou de passer en France, Et dans ce dernier Cas, Le passage et la Subsistance leur Seront Accordés Sur les Vaisseaux de Sa M[té] Britanique, pour Eux, Leurs familles, et leurs bagages.

Accordé.

ART: 24.

Les Vivres et Autres aprivisionement qui se trouveront En Nature dans les Magasins du Munitionaire, Tant dans les Villes de Montreal, et des 3. Rivieres, que dans les Campagnes, Lui Seront Conservés, Les d: Vivres Lui apartenant et Non au Roy, Et Il lui Sera Loisible de les Vendre aux françois ou aux Anglois.

Tout ce qui se trouve dans les Magazins destinés à L'Usage des Troupes, doit étre delivré au Commissaire Anglois pour les Troupes du Roy.

ART: 25.

Le passage En france Sera Egalement accordé sur les Vaisseaux de Sa M[té] Britanique, ainsi que la Subsistance, à Ceux des Officiers

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de la Compagnie des Indes qui Voudront y passer, Et Ils Emmeneront leurs familles domestiques et bagages... Sera permis à L'Agent principal de la d^{e}: Compagnie, Suposé qu'il Voulut passer en france de Laisser telle personne qu'il Jugera apropos Jusques à L'Année prochaine, pour terminer les Affaires de la d^{e}. Comp^{le}: et faire le recouvrement des Sommes qui lui sont dües. L'Agent principal Conservera tous les Papiers de la d^{e} Compagnie, Et Ils ne pouront Estre Visités.

ART: 26.

Cette Compagnie Sera maintenüe dans la proprieté des Ecarlatines et Castors qu'Elle peut Avoir dans La Ville de Montreal; Il n'y Sera point touché, Sous quelque prétexte que ce Soit, Et Il Sera donné à L'Agent principal les facilités Necessaires pour faire passer Cette Année En france Ses Castors Sur les Vaisseaux de Sa M^{té} Britanique, En payant le fret sur le pied, que les Anglois le payeroient.

Accordé pour ce qui peut appartenir à la Compagnie ou aux particuliers, mais Si Sa Majesté Très Chretienne y a aucune part, Elle doit être au profit du Roy

ART: 27.

Le Libre Exercice de la Religion Catolique, Apostolique et Romaine Subsistera En Son Entier; En Sorte que tous Les Estats et les peuples des Villes et des Campagnes, Lieux et postes Eloignés pouront Continuer de S'assembler dans les Eglises, et de frequenter les Sacremens, Comme Cy devant, Sans Estre Inquietés, En Aucune Maniere directement, ni Indirectement.

Ces peuples seront Obligés par le Gouvernement Anglois à payer aux prestres qui en prendront Soin, Les Dixmes, et tous les droits qu'ils avoient Coutume de payér sous le Gouvernement de Sa M^{té} tres Chretienne.

Accordé, pour le Libre Exercise de leur Religion. L'Obligation de payer la Dixme aux Prêtres, dependra de la Volonté du Roy.

ART: 28.

Le Chapitre, Les Prestres, Curés et Missionaires, Continueront avec Entiere Liberté leurs Exercises et fonctions Curiales dans les paroisses des Villes et des Campagnes.

Accordé—

ART: 29.

Les Grands Vicaires Només par le Chapitre pour administrer le Dioceze pendant la Vacance du Siege Episcopal, pouront demeurer dans les Villes oú paroisses des Campagnes, Suivant qu'ils le Jugeront à propos. Ils pouront En tout Temps Visiter les differentes paroisses du Dioceze, avec les Cérémonies Ordinaires, Et Exercer toute La Jurisdiction qu'ils Exerçoient sous la domi-

Accordé, Excepté ce qui regarde l'Article Suivant.

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	nation françoise.—Ils Joüiront des mêmes droits En Cas de Mort du futur Evesque, dont Il sera parlé à L'Article Suivant.
	ART : 30.
Refusé.—	Si par Le Traitté de paix, Le Canada restoit au pouvoir de Sa M^{té} Britanique, Sa M^{té} Tres Chretiefie Continueroit à Nomer L'Evesque de La Colonie, qui Seroit toujours de la Comunion Romaine, et Sous L'Autorité duquel les peuples Exerceroient La Religion Romaine.
	ART : 31.
C'est Article est compris sous le precedent.	Poura Le Seigneur Evesque Etablir dans le besoin de Nouvelles paroisses, Et pourvoir au rétablissement de Sa Cathedrale et de Son Palais Episcopal ; Et Il Aura En Attendant la Liberté de demeurer dans les Villes, oú paroisses, Comme Il le Jugera àpropos.—Il poura Visiter son Dioceze avec les Ceremonies Ordinaire, Et Exercer toute La Jurisdiction que son predecesseur Exerçoit sous la domination francoise ; sauf a Exiger de Lui Le Serment de fidelité, oú promesse de ne rien faire, ni rien dire Contre Le Service de Sa M^{té} Britanique.
	Art : 32.
Accordé.	Les Comunautés de filles Seront Conservées dans leurs Constitutions et privileges. Elles Continüeront d'Observer leurs règles—Elles seront Exemptes du Logement de Gens de Guerre, Et Il Sera fait deffenses de Les Troubler dans Les Exercices de pieté qu'Elles pratiguent, ni d'Entrer chez Elles ; On leur donnera même des Sauves Gardes, Si Elles En demandent.
	ART : 33.
Refusé Jusqu'a ce que le plaisir du Roy soit Connu.	Le precedent Article Sera pareillement Executé à L'Egard des Comunautés des Jesuites et Recolets, et de la Maison des prestres de S^{t} Sulpice à Montreal ; Ces derniers et Les Jesuites Conserveront Le droit qu'ils ont de Nomer à Certaines Cures et Missions, Comme Cy devant.
	ART : 34.
Accordé.	Toutes les Comunautés, Et tous les prestres Conserveront Leurs Meubles, La proprieté, Et L'Usufruit des Seigneuries, Et Autres biens que les Uns et les Autres possedent dans la Colonie de quelque Nature qu'ils Soient, Et Les d : biens seront Conservés dans leurs priviléges, droits, honeurs, et Exemptions.

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ART : 35.

Si Les Chanoines, Prestres, Missionaires, Les Prestres du Seminaire des Missions Etrangeres Et de S[t] Sulpice, ainsi que les Jesuites et Les Recolets, Veulent passer En france, Le passage leur sera Accordé sur les Vaisseaux de Sa Majesté Britanique; Et Tous auront la Liberté de Vendre, En total ou parti-, Les biensfonds, Et Mobiliers qu'ils possedent dans la Colonie, soit aux francois, ou aux Anglois, sans que le Gouvernement Britanique puisse y mettre le moindre Empeschement ni Obstacle.

Ils pouront Emporter avec Eux, ou faire passer En france Le produit de quelque Nature qu'il soit, des d[s] biens Vendus, en payant Le fret, Comme Il est dit à L'Article 26.

Et Ceux d'Entre Ces Prestres qui Voudront passer Cette Année, Seront Nouris pendant La Traversée aux dépens de Sa M[té] Britanique, Et pouront Emporter avec Eux leurs bagages.

Ils seront les maitres de disposer de leurs biens, et d'en passer le produit, ainsi que leurs personnes, et tout ce qui leur appartient, En france.

ART : 36.

Si par Le Traitté de Paix, Le Canada reste à Sa M[té] Britanique, Tous Les Francois, Canadiens, Accadiens, Comerçant, et Autres personnes qui Voudront se retirer En france, En Auront la permission du Général Anglois qui leur procurera le passage.—Et Néantmoins Si d'icy à Cette décision Il Se trouvoit des comerçans françois où Canadiens, ou Autres personnes qui Voulussent passer En france, Le Général Anglois Leur En donneroit Egalement la permi-sion Les Uns et les Autres Emmeneront avec Eux leurs familles domestiques et bagages.

Accordé.

ART : 37.

Les Seigneurs de Terres, Les Officiers Militaires et de Justice, Les Canadiens, Tant des Villes qu- des Campagnes, Les francois Etablis ou Comerçant dans toute l'Etendue de La Colonie de Canada, Et Toutes Autres personnes que ce puisse Estre, Conserveront L'Entiere paisible proprieté et possession de leurs biens, Seigneuriaux et Roturiers Meubles et Immeubles, Marchandises, Pelleteries, et Autres Effets, même de Leurs batimens de Mer; Il n'y Sera point touché ni fait le moindre domage, sous quelque prétexte que ce Soit :—Il leur Sera Libre de les Conserver, Loüer, Vendre, Soit aux François, ou aux Anglois, d'En Emporter Le produit En Lettres de Change, pelleteries Es-

Accordé comme par L'Article 26.

peces Sonantes, ou autres retours, Lorsqu'ils Jugeront à propos de passer en france, En payant le fret, Comme à L'Article *26*.

Ils Joüiront aussi des pelleteries qui sont dans les postes d'En haut, & qui leur apartiennent, Et qui peuvent même estre En Chemin de se rendre à Montreal. Et à cet Effet, Il leur Sera permis d'Envoyer dès cette Année, ou la prochaine, des Canots Equipés pour Chercher Celles de ces pelleteries qui auront restées dans ces postes.

ART : 38.

Tous Les peuples Sortis de L'Accadie qui se trouveront en Canada, y Compris les frontieres du Canada du Costé de L'Accadie, auront Le même Traitement que Les Canadiens, et Joüiront des mêmes privileges qu'Eux.

C'est au Roy à disposer de Ses Anciens Sujets : en attendant Ils Joüiront des mêmes privileges que les Canadiens.

ART : 39.

Aucuns Canadiens, Accadiens, ni Francois, de Ceux qui sont presentement en Canada, et sur les frontieres de La Colonie du Costé de L'Accadie du Détroit, Michilimakinac, et Autres Lieux et Postes des paÿs d'Enhaut, ni les Soldats Mariés et non Mariés restant en Canada, ne pouront Estre portés, ni Transmigrés dans les Colonies Angloises, ni en L'Ancienne Angleterre, Et Ils ne pouront Estre recherchés pour avoir pris Les Armes.

Accordé, Excepté à l'égard des Acadiens.

ART : 40.

Les Sauvages oũ Indiens Alliés de Sa M^{té} tres Chretienne Seront maintenus dans Les Terres qu'ils habitent, S'ils Veulent y rester ; Ils ne pouront Estre Inquietés Sous quelque prétexte que ce puisse Estre, pour avoir pris les Armes et Servi Sa Ma^{té} très Chretienne.—Ils auront Comme les François, la Liberté de Religion et Conserveront leurs Missionaires.—Il sera permis aux Vicaires généraux Actuels Et à L'Eveque, lorsque Le Siege Episcopal Sera rempli, de leur Envoyer de Nouveaux Missionaires Lorsqu'ils Le Jugeront Necessaire.

Accordé, à la reserve du dernier Article qui a dejà été refusé.

ART : 41.

Les francois, Canadiens, Et Accadiens, qui resteront dans La Colonie, de quelque Estat et Condition qu'ils Soient, ne Seront, ni ne pouront Estre forcés a prendre les Armes Contre Sa M^{té} très Chretienne, ni Ses Alliés, directement, ni Indirectement, dans quelque

Ils deviennent Sujets du Roy.

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Occasion que ce Soit. Le Gouvernement Britanique ne poura Exiger d'Eux qu'Une Exacte Neutralité.

ART : 42.

Les francois et Canadiens Continüeront d'Estre Gouvernés Suivant La Coutume de Paris et les Loix et Usages Etablis pour ce pays ; Et Ils ne pouront Estre Assujettis à d'Autres Impots qu'a Ceux qui Estoient Etablis sous la domination françoise.

Répondu par les Articles précedents, et particulierement par le dernier.

ART : 43.

Les papiers du Gouvernement resteront sans Exception au pouvoir du M^{is} de Vaudreüil, Et passeront en france avec lui. Ces papiers ne pouront Estre Visites sous quelque prétexte que ce Soit.

Accordé avec la reserve déja faite.—

ART : 44.

Les papiers de L'Intendance, des Bureaux du Controle de La Marine, des Trésoriers Ancien et Nouveau, des Magazins du Roy, du Bureau du Domaine et des forges S^{t} Maurice, resteront au pouvoir de M. Bigot Intendant, Et Ils Seront Embarqués pour france dans le Vaisseau ou Il passera. Ces papiers ne Seront point Visités.

Il en est de même de cet Article.

ART : 45.

Les Registres et Autres papiers du Conseil Superieur de Quebec, de la Prevosté Et Amirauté de la même Ville, Ceux des Jurisdictions Royales des trois Rivieres et de Montreal ; Ceux des Jurisdictions Seigneuriales de la Colonie ; Les Minutes des Actes des Notaires des Villes et des Campagnes, Et généralement Les Actes & Autres papiers qui peuvent Servir à Justifier L'Estat et la fortune des Citoyens, resteront dans La Colonie dans les Greffes des Jurisdictions dont Ces papiers dépendent.

Accordé.—

ART : 46.

Les Habitans et Négocians Joüiront de tous les privilèges du Comerce aux mêmes faveurs Et Conditions accordées aux Sujets de Sa Majesté Britanique, tant dans les pays d'Enhaut que dans L'Interieur de La Colonie.

Accordé.—

ART : 47.

Les Negres et panis des deux Séxes, resteront En leur qualité d'Esclaves, en la possession des françois et Canadiens à qui Ils apar-

Accordé, Excepté Ceux qui auront étés faits Prisonniers.

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tiennent ; Il leur Sera libre de les garder à leur Service dans la Colonie, ou de les Vendre, Et Ils pouront aussi Continuer à les faire Elever dans la Religion Romaine.—

ART : 48.

Accordé

Il Sera permis au M[ls] de Vaudreüil, aux Officiers généraux et Superieurs des Troupes de Terre ; Aux Gouverneurs et Etats Majors des differentes places de La Colonie ; Aux Officiers Militaires et de Justice, Et à toutes Autres personnes qui Sortiront de la Colonie, ou qui sont deja absents, de Nommer et Etablir des procureurs pour Agir pour Eux Et en leur Nom, dans l'administration de leurs biens Meubles et Immeubles, Jusqu'a ce que la paix Soit faite. Et si par le Traitté des deux Courones Le Canada ne rentre point Sous La domination françoise, Ces Officiers, ou Autres personnes, ou procureurs pour Eux, auront L'agrement de Vendre leurs Seigneuries, Maisons, et Autres biensfonds, Leurs Meubles et Effets, &cā, d'En Emporter, ou faire passer Le produit en france, Soit En Lettres de Change, Espèces Sonantes, pelleteries, ou Autres Retours, Comme Il Est dit à L'Article 37.

ART : 49.

Accordé.—

Les habitans et Autres personnes qui auront Soufert quelque domage En leurs biens, Meubles ou Immeubles restés à Quebec Sous la foy de la Capitulation de Cette Ville, pouront faire leurs répresentations au Gouvernement Britanique qui leur rendra La Justice, qui leur Sera düe Contre qui Il apartiendra.

ART : 50 ET DERNIER.

Accordé.—

La presente Capitulation Sera Inviolablement Executée En tous Ses Articles, de part et d'autre et de bonne foy, Non obstant toute Infraction et tout autre prétexte par Raport aux précedentes Capitulations, et Sans pouvoir Servir de répresailles.

P.S.

ART. 51.

On Aura Soin que les Sauvages, n'insulte aucun des Sujets de Sa Majesté Très Chrêtienne.

Le Général Anglois S'Engagera, En Cas qu'il reste des Sauvages, après La Redition de Cette Ville, à Empecher qu'ils n'Entrent dans Les Villes et qu'ils n'Insultent en Aucune Maniere, Les Sujets de Sa M[té] Trés Chrêtienne.

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ART : 52.

Les Troupes et Autres Sujets de Sa M^té Très Chretienne, qui doivent passer En france, Seront Embarquées Quinze Jours au plus tard, après La Signature de la présente Capitulation.

Repondu par L'Article 11^e

ART : 53.

Les Troupes et Autres Sujets de Sa M^té très Chretienne, qui devront passer En france, resteront Logées, ou Campées dans la Ville de Montreal, Et Autres postes qu'Elles occupent présentement Jusqu'au moment oũ Elles seront Embarquées pour le départ.—Il sera néantmoins Accordé des passeports à Ceux qui En auront besoin, pour Les differens Lieux de la Colonie pour Aller Vaquer à leurs Affaires.

Accordé...

ART : 54.

Tous les Officiers et Soldats des Troupes au Service de France qui Sont prisonniers à la Nouvelle Angleterre, et faits En Canada, Seront renvoyés Le plustost qu'il Sera possible En france, oũ Il Sera Traitté de leur Rançon, ou Echange, Suivant Le Cartel ; Et Si quelques Uns de Ces Officiers avoient des Affaires En Canada, Il leur Sera permis d'y Venir.

Accordé..

ART : 55.

Quant aux Officiers de Milices aux Miliciens, et aux Accadiens qui sont prisoniers à la Nouvelle Angleterre, Ils Seront renvoyés Sur leurs Terres.

Accordé à la reserve de ce qui regarde les Acadiens.

fait a Montreal le 8 Sep^e 1760

VAUDREÜIL.

Fait au Camp devant Montreal ce 8^e Septembre 1760

JEFF : AMHERST.

endorsed : Copy—

Articles of Capitulation—

Granted to the Marquis de Vaudreüil.—

8^th Sep^r 1760.

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(Translation.)[1]

ARTICLES OF CAPITULATION.

Between their Excellencies Major GENERAL AMHERST, Commander in Chief of his Britannic Majesty's troops and forces in North-America, on the one part, and the Marquis de Vaudreuil, &c. Governor and Lieutenant-General for the King in Canada, on the other.

ARTICLE IST.

Twenty-four hours after the signing of the present capitulation, the British General shall cause the troops of his Britannic Majesty to take possession of the Gates of the town of Montreal: and the British Garrison shall not enter the place till after the French troops shall have evacuated it.—"The whole Garrison of Montreal must lay "down their arms, and shall not serve during the present war Immediately after the "signing of the present capitulation, the King's troops shall take possession of the "gates, and shall post the Guards necessary to preserve good order in the town."

ARTICLE IID.

The troops and the militia, who are in Garrison in the town of Montreal, shall go out by the gate of Quebec, with all the honours of war, six pieces of cannon and one mortar, which shall be put on board the vessel where the Marquis de Vaudreuil shall embark, with ten rounds for each piece; and the same shall be granted to the Garrison of the Three Rivers, as to the honours of war.—"Referred to the next article."

ARTICLE IIID.

The troops and militia, who are in Garrison in the Fort of Jacques Cartier, and in the Island of St. Helen, and other forts, shall be treated in the same manner, and shall have the same honours; and these troops shall go to Montreal, or the Three Rivers or Quebec; to be there embarked for the first sea port in France, by the shortest way. The troops, who are in our posts, situated on our frontiers, on the side of Acadia, at Detroit, Michilimaquinac, and other posts, shall enjoy the same honours, and be treated in the same manner.—"All these troops are not to serve during the present war, and "shall likewise lay down their arms, the rest is granted."

ARTICLE IVTH.

The Militia after evacuating the above towns, forts and posts, shall return to their habitations, without being molested on any pretence whatever, on account of their having carried arms.—"Granted."

ARTICLE VTH.

The troops, who keep the field, shall raise their camp, drums beating, with their arms, bagage and artillery, to join the garrison of Montreal, and shall be treated in every respect the same.—"These troops, as well as the others, must lay down their arms."

[1] As in the case of the Articles of Capitulation of Quebec, the English version of the Articles of Capitulation of Montreal, here given, follows that in "Capitulations and Extracts of Treaties Relating to Canada," 1797. Other versions with slight variations are to be found in Knox's "Journal" Vol. II., p. 423, in "Documents Relative to the Colonial History of the State of New York," Vol. X., p. 1107, and in the "Annual Register" for 1760, p. 222.

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ARTICLE VIth.

The Subjects of his Britanic Majesty, and of his most Christian Majesty, Soldiers, Militia or Seamen, who shall have deserted or left the service of their Sovereign, and carried arms in North-America, shall be, on both sides pardoned for their crime; they shall be respectively returned to their country; if not, each shall remain where he is without being sought after or molested.—" Refused."

ARTICLE VII.

The Magazines, the artillery, firelocks, sabres, ammunition of war, and, in general every thing that belongs to his most Christian Majesty, as well in the towns of Montreal and Three Rivers, as in the forts and post mentioned in the Third article shall be delivered up, according to exact Inventories, to the commissaries who shall be appointed to receive the same in the name of his Britannic Majesty. Duplicates of the said Inventories shall be given to the Marquis de Vaudreuil.—" This is every thing that can " be asked on this article."

ARTICLE VIII.

The Officers, Soldiers, Militia, Seamen and even the Indians, detained on account of their wounds or sickness, as well as in the hospital, as in private houses, shall enjoy the privileges of the cartel, and be treated accordingly.—" The sick and wounded shall " be treated the same as our own people."

ARTICLE IX.

The British General shall engage to send back, to their own homes, the Indians, and Moraignans, who make part of his armies, immediately after the signing of the present capitulation, and, in the mean time, the better to prevent all disorders on the part of those who may not be gone away, the said Generals shall give safe-guards to such persons as shall desire them, as well in the town as in the country. " The first part " refused."—" There never have been any cruelties committed by the Indians of our " army: and good order shall be preserved."

ARTICLE X.

His Britannic Majesty's General shall be answerable for all disorders on the part of his troops, and shall oblige them to pay the Damages they may do, as well in the towns as in the country.—" Answered by the preceding article."

ARTICLE XI.

The British General shall not oblige the Marquis de Vaudreuil to leave the town of Montreal before.................... and no person shall be quartered in his house till he is gone. The Chevalier de Levis, Commander of the land forces and colony troops, the Engineers, Officers of the Artillery, and Commissary of war, shall also remain at Montreal till the said day, and shall keep their lodgings. The same shall be observed with regard to M. Bigot, Intendant, the Commissaries of Marines and writers, whom the said M. Bigot shall have occasion for, and no person shall be lodged at the Intendant's house before he shall take his departure.—" The Marquis de Vaudreuil, and " all these gentlemen, shall be masters of their houses, and shall embark, when the " King's ship shall be ready to sail for Europe; and all possible conveniences shall be " granted them."

ARTICLE XII.

The most convenient vessel that can be found shall be appointed to carry the Marquis de Vaudreuil, M. de Rigaud, the Governor of Montreal, and the suite of this General, by the straitest passage to the first sea port in France; and every necessary

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accommodation shall be made for them. This vessel shall be properly victualled at the expence of his Britannic Majesty: and the Marquis de Vaudreuil shall take with him his papers, without their being examined, and his equipages, plate, baggage, and also those of his retinue.—"Granted, except the archives which shall be necessary for the "Government of the country."

ARTICLE XIII.

If before, or after, the embarkation of the Marquis de Vaudreuil, news of Peace should arrive, and, that by treaty, Canada should remain to his most Christian Majesty, the Marquis de Vaudreuil shall return to Quebec or Montreal; every thing shall return to its former state under the Dominion of his most Christian Majesty, and the present capitulation shall become null and of no effect.—"Whatever the King may have done, "on this subject, shall be obeyed."

ARTICLE XIV.

Two ships will be appointed to carry to France, le Chevalier de Levis, the principal officers, and the staff of the Land forces, the Engineers, officers of Artillery, and their domestics. These vessels shall likewise be victualled, and the necessary accomodation provided in them. The said officers shall take with them their papers, without being examined, and also, their equipages and bagage. Such of the said officers as shall be married, shall have liberty to take with them their wives and children, who shall also be victualled.—Granted, "except that the Marquis de Vaudreuil and all the officers, of "whatever rank they may be, shall faithfully deliver to us all the charts and plans of "the country."

ARTICLE XV.

A vessel shall also be appointed for the passage of Mr. Bigot, the Intendant, with his suite; in which vessel the proper accomodation shall be made for him, and the persons he shall take with him: he shall likewise embark with him his papers, which shall not be examined: his equipages, plate, baggage and those of his suite: this vessel shall be victualled as before mentioned.—"Granted, with the same reserve, as in the preceding "article."

ARTICLE XVI.

The British General shall also order the necessary and most convenient vessels to carry to France M. de Longueuil, Governor of Trois Rivieres, the staff of the colony, and the Commissary of the Marine; they shall embark therein their families, servants, baggage and equipages, and they shall be properly victualled, during the passage, at the expence of his Britannic Majesty.—"Granted."

ARTICLE XVII.

The officers and soldiers, as well as of the Land-forces, as of the colony, and also the Marine Officers, and Seamen, who are in the colony, shall be likewise embarked for France, and sufficient and convenient vessels shall be appointed for them. The Land and sea officers, who shall be married, shall take with them their families, and all of them shall have liberty to embark their servants and baggage. As to the soldiers and seamen, those who are married shall take with them their wives and children, and all of them shall embark their haversacks and baggage; these vessels shall be properly and sufficiently victualled at the expence of his Britannic Majesty.—"Granted."

ARTICLE XVIII.

The Officers, Soldiers and the followers of the troops, who shall have their baggage in the fields, may send for it before they depart, without any hindrance or molestation. —"Granted."

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ARTICLE XIX.

An hospital ship shall be provided by the British General, for such of the wounded and sick officers, soldiers and seamen as shall be in a condition to be carried to France, and shall likewise be victualled at the expence of his Britannic Majesty. It shall be the same with regard to the other wounded and sick officers, soldiers and sailors, as soon as they shall be recovered. They shall have liberty to carry with them their wives, children, servants and baggage; and the said soldiers and sailors shall not be solicited nor forced to enter into the service of his Britannic Majesty.—"Granted."

ARTICLE XX.

A Commissary and one of the King's Writers, shall be left to take care of the hospitals, and whatever may relate to the service of his most Christian Majesty.—"Granted."

ARTICLE XXI.

The British General shall also provide ships for carrying to France the officers of the supreme council, of justice, police, admiralty, and all other officers, having commissions or brevets from his most Christian Majesty, for them, their families, servants and equipages, as well as for the other officers: and they shall likewise be victualled at the expence of his Britannic Majesty. They shall, however, be at liberty to stay in the colony, if they think proper to settle their affairs, or to withdraw to France whenever they think fit.—"Granted, but if they have papers relating to the Government of the "country, they are to be delivered up to us."

ARTICLE XXII.

If there are any Military officers, whose affairs should require their presence in the colony till the next year, they shall have liberty to stay in it, after having obtained the permission of the Marquis de Vaudreuil for that purpose, and without being reputed prisoners of war.—"All those whose private affairs shall require their stay in the coun-"try, and who shall have the Marquis de Vaudreuil's leave for so doing, shall be allowed "to remain till their affairs are settled."

ARTICLE XXIII.

The Commissary for the King's provisions shall be at liberty to stay in Canada till next year, in order to be enabled to answer the debts he has contracted in the colony, on account of what he has furnished; but, if he should prefer to go to France this year, he shall be obliged to leave, till next year, a person to transact his business. This private person shall preserve, and have liberty to carry off, all his papers, without being inspected. His Clerks shall have leave to stay in the colony or go to France; and in this last case, a passage and subsistence, shall be allowed them on board the ships of his Britannic Majesty, for them, their families, and their baggage.—"Granted."

ARTICLE XXIV.

The provisions and other kind of stores, which shall be found in the Magazines of the commissary, as well in the towns of Montreal, and of the Three-Rivers, as in the country, shall be preserved to him, the said provisions belonging to him, and not to the King; and he shall be at liberty to sell them to the French and English.—"Every "thing that is actually in the magazines, destined for the use of the troops, is to be "delivered to the British commissary, for the King's forces."

ARTICLE XXV.

A passage to France shall likewise be granted, on board of his Britannic Majesty's ships, as well as victuals to such officers of the India company as shall be willing to go thither, and they shall take with them their families, servants and baggage. The Chief

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agent of the said Company, in case he should chuse to go to France, shall be allowed to leave such person as he shall think proper till next year, to settle the affairs of the said Company, and to recover such sums as are due to them. The said chief agent shall keep possession of all the papers belonging to the said company, and they shall not be liable to inspection.—" Granted."

ARTICLE XXVI.

The said company shall be maintained in the property of the Ecarlatines, and Castors, which they may have in the town of Montreal; they shall not be touched under any pretence whatever, and the necessary Licences shall be given to the Chief Agent, to send this year his Castors to France, on board his Britannic Majesty's ships, paying the freight on the same footing as the British would pay it.—" Granted, with regard to "what may belong to the company, or to private persons; but if his Most Christian "Majesty has any share in it, that must become the property of the King."

ARTICLE XXVII.

The free exercise of the Catholic, Apostolic, and Roman Religion, shall subsist entire, in such manner that all the states and the people of the Towns and countries, places and distant posts, shall continue to assemble in the churches, and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly. These people shall be obliged, by the English Government, to pay their Priests the tithes, and all the taxes they were used to pay under the Government of his most Christian Majesty.—" Granted, as to the free exercise of their religion, the obligation of pay-"ing the tithes to the Priests will depend on the King's pleasure."

ARTICLE XXVIII.

The Chapter, Priests, Curates and Missionaries shall continue, with an entire liberty, their exercise and functions of cures, in the parishes of the towns and countries. —" Granted."

ARTICLE XXIX.

The Grand Vicars, named by the Chapter to administer to the diocese during the vacancy of the Episcopal see, shall have liberty to dwell in the towns or country parishes, as they shall think proper. They shall at all times be free to visit the different parishes of the Diocese with the ordinary ceremonies, and exercise all the jurisdiction they exercised under the French Dominion. They shall enjoy the same rights in case of the death of the future Bishop, of which mention will be made in the following article.— " Granted, except what regards the following article."

ARTICLE XXX.

If by the treaty of peace, Canada should remain in the power of his Britannic Majesty, his most Christian Majesty shall continue to name the Bishop of the colony, who shall always be of the Roman communion, and under whose authority the people shall exercise the Roman Religion.—" Refused."

ARTICLE XXXI.

The Bishop shall, in case of need, establish new parishes, and provide for the re-building of his Cathedral and his Episcopal palace; and, in the mean time, he shall have the liberty to dwell in the towns or parishes, as he shall judge proper. He shall be at liberty to visit his Diocese with the ordinary ceremonies, and exercise all the jurisdiction which his predecessor exercised under the French Dominion, save that an oath of fidelity, or a promise to do nothing contrary to his Britannic Majesty's service, may be required of him.—" This article is comprised under the foregoing—

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ARTICLE XXXII.

The communities of Nuns shall be preserved in their constitutions and privileges; they shall continue to observe their rules, they shall be exempted from lodging any military; and it shall be forbid to molest them in their religious exercises, or to enter their monasteries: safe-guards shall even be given them, if they desire them.—"Granted."

ARTICLE XXXIII.

The preceeding article shall likewise be executed, with regard to the communities of Jesuits and Recollects and of the house of the priests of St. Sulpice at Montreal; these last, and the Jesuits, shall preserve their right to nominate to certain curacies and missions, as heretofore.—"Refused till the King's pleasure be known."

ARTICLE XXXIV.

All the communities, and all the priests, shall preserve their moveables, the property and revenues of the Seignories and other estates, which they possess in the colony, of what nature soever they be; and the same estates shall be preserved in their privileges, rights, honours, and exemptions—"Granted."

ARTICLE XXXV.

If the Canons, Priests, Missionaries, the Priests of the seminary of the foreign Missions, and of St. Sulpice, as well as the Jesuits, and the Recollects, chuse to go to France, a passage shall be granted them in his Britannic Majesty's ships, and they shall have leave to sell, in whole, or in part, the estates and moveables which they possess in the colonies, either to the French or to the English, without the least hindrance or obstacle from the British Government.—They may take with them, or send to France, the produce of what nature soever it be, of the said goods sold, paying the freight, as mentioned in the XXVIth. article; and such of the said Priests, who chuse to go this year, shall be victualled during the passage, at the expence of his Britannic Majesty; and they shall take with them their baggage.—"They shall be masters to dispose of their "estates and to send the produce thereof, as well as their persons, and all that belongs "to them to France."

ARTICLE XXXVI.

If by the treaty of Peace, Canada remains to his Britannic Majesty, all the French, Canadians, Acadians, Merchants and other persons who chuse to retire to France, shall have leave to do so from the British General, who shall procure them a passage: and nevertheless, if, from this time to that decision, any French, or Canadian Merchants or other persons, shall desire to go to France; they shall likewise have leave from the British General. Both the one and the other shall take with them their families, servants, and baggage.—"Granted."

ARTICLE XXXVII.

The Lords of Manors, the Military and Civil officers, the Canadians as well in the Towns as in the country, the French settled, or trading, in the whole extent of the colony of Canada, and all other persons whatsoever, shall preserve the entire peaceable property and possession of the goods, noble and ignoble, moveable and immoveable, merchandizes, furs and other effects, even their ships; they shall not be touched, nor the least damage done to them, on any pretence whatever. They shall have liberty to keep, let or sell them, as well to the French as to the British; to take away the produce of them in Bills of exchange, furs, specie or other returns, whenever they shall judge proper to go to France, paying their freight, as in the XXVIth Article. They shall also have the furs which are in the posts above, and which belong to them, and may be on the way to Montreal; and, for this purpose, they shall have leave to send, this year, or the next,

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canoes fitted out, to fetch such of the said furs as shall have remained in those posts.—"Granted as in the XXVIth article."

ARTICLE XXXVIII.

All the people who have left Acadia, and who shall be found in Canada, including the frontiers of Canada on the side of Acadia, shall have the same treatment as the Canadians, and shall enjoy the same privileges.—"The King is to dispose of his ancient "Subjects: in the mean time, they shall enjoy the same privileges as the Canadians."

ARTICLE XXXIX.

None of the Canadians, Acadians or French, who are now in Canada, and on the frontiers of the colony, on the side of Acadia, Detroit, Michillimaquinac, and other places and posts of the countries above, the married and unmarried soldiers, remaining in Canada, shall be carried or transported into the British colonies, or to Great-Britain, and they shall not be troubled for having carried arms—"Granted, except with regard "to the Acadians."

ARTICLE XL.

The Savages or Indian allies of his most Christian Majesty, shall be maintained in the Lands they inhabit; if they chuse to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries. The actual Vicars General, and the Bishop, when the Episcopal see shall be filled, shall have leave to send to them new Missionaries when they shall judge it necessary.—"Granted except the last article, which has been already refused."

ARTICLE XLI.

The French, Canadians, and Acadians of what state and condition soever, who shall remain in the colony, shall not be forced to take arms against his most Christian Majesty, or his Allies, directly or indirectly, on any occasion whatsoever; the British Government shall only require of them an exact neutrality.—"They become Subjects "of the King."

ARTICLE XLII.

The French and Canadians shall continue to be governed according to the custom of Paris, and the Laws and usages established for this country, and they shall not be subject to any other imposts than those which were established under the French Dominions.—"Answered by the preceding articles, and particularly by the last."

ARTICLE XLIII.

The Papers of the Government shall remain without exception, in the power of the Marquis de Vaudreuil and shall go to France with him. These papers shall not be examined on any pretence whatsoever.—"Granted, with the reserve already made."

ARTICLE XLIV.

The papers of the Intendancy, of the offices of Comptroller of the Marine, of the ancient and new treasurers, of the Kings magazines, of the offices of the Revenues and forges of St. Maurice, shall remain in the power of M. Bigot, the Intendant; and they shall be embarked for France in the same vessel with him; these papers shall not be examined.—"The same as in this article."

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ARTICLE XLV.

The Registers, and other papers of the Supreme Council of Quebec, of the Prévoté, and Admiralty of the said city; those of the Royal Jurisdictions of Trois Rivieres and of Montreal; those of the Seignorial Jurisdictions of the colony; the minutes of the Acts of the Notaries of the towns and of the countries; and in general, the acts, and other papers, that may serve to prove the estates and fortunes of the Citizens, shall remain in the colony, in the rolls of the jurisdictions on which these paper depend.—"Granted."

ARTICLE XLVI.

The inhabitants and Merchants shall enjoy all the privileges of trade, under the same favours and conditions granted to the subjects of his Britannic Majesty, as well as in the countries above, as the interior of the colony.—"Granted."

ARTICLE XLVII.

The Negroes and panis of both sexes shall remain, in their quality of slaves, in the possession of the French and Canadians to whom they belong; they shall be at liberty to keep them in their service in the colony or to sell them; and they may also continue to bring them up in the Roman Religion—"Granted, except those who shall have been made prisoners."

ARTICLE XLVIII.

The Marquis de Vaudreuil, the General and Staff Officers of the land-forces, the Governors and Staff officers of the different places of the colony, the Military and Civil officers, and all other persons who shall leave the colony, or who are already absent, shall have leave to name and appoint Attornies to act for them, and in their name in the administration of their effects, moveable and immoveable, until the peace; and, if, by the treaty between the two crowns, Canada does not return under the French dominions, these officers, or other persons, or attornies for them, shall have leave to sell their manors, houses, and other estates, their moveables and effects, &c. to carry away or send to France, the produce thereof, either in bills of exchange, specie, furs or other returns, as is mentioned in the XXXVIIth Article.—"Granted."

ARTICLE XLIX.

The inhabitants, and other persons, who shall have suffered any damage in their goods, moveable or immoveable, which remained at Quebec, under the faith of the capitulation of that city, may make their representations to the British Government, who shall render them due justice against the person to whom it shall belong.—"Granted."

ARTICLE L. *and last.*

The present capitulation shall be inviolably executed in all its articles, and bonâ fide, on both sides, notwithstanding any infraction, and any other pretence, with regard to the preceding capitulations, and without making use of reprisals.—"Granted."

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ARTICLE LI.

The British General shall engage, in case any Indians remain after the surrender of this town, to prevent their coming into the towns, and that they do not, in any manner, insult the subjects of his Most Christian Majesty.—"Care shall be taken that the Indians do not insult any of the subjects of his Most Christian Majesty."

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ARTICLE LII.

The troops and other subjects of his Most Christian Majesty, who are to go to France, shall be embarked, at latest, fifteen days after the signing of the present capitulation.—"Answered by the XIth Article."

ARTICLE LIII.

The Troops and other subjects of his Most Christian Majesty, who are to go to France, shall remain lodged and incamped in the town of Montreal, and other posts which they now occupy, till they shall be embarked for their departure: passeports, however, shall be granted to those who shall want them, for the different places of the colony, to take care of their affairs.—"Granted."

ARTICLE LIV.

All the officers and soldiers of the troops in the service of France, who are prisoners in New-England: and who were taken in Canada, shall be sent back, as soon as possible, to France, where their ransom or exchange shall be treated of, agreeable to the cartel; and if any of these officers have affairs in Canada, they shall have leave to come there.—"Granted."

ARTICLE LV.

As to the officers of the Militia, the Militia, and the Acadians, who are prisoners in New-England, they shall be sent back to their Countries.

Done at Montreal, the 8th of September, 1760.

"VAUDREUIL."

Granted except what regards the Acadians. Done in the Camp before Montreal, the 8th September, 1760.

"JEFFERY AMHERST."

COMMISSION AS JUDGE TO JACQUES ALLIER.[1]

Par son Excellence Monseigneur Jacques Murray Brigadier Général et Commendant en chef des Troupes de sa Majesté Britannique dans le Fleuve St Laurent Gouvernement de Quebec et des pays conquis—

Etant necessaire pour le bien et l'avantage des habitants des paroisses de Berthier et suivantes jusqu'à Kamouraska inclusivement et maintenir la police et le bon ordre

1 This appointment is apparently the first formal step taken, beyond the city of Quebec where, as we find, Colonel Young had been appointed civil and criminal judge, towards the regular administration of law within the conquered territory. Wolfe had issued several proclamations or manifestoes to the people below Quebec, promising protection to life and property on condition that they should lay down their arms; but before the capture of the city these had little effect. After the capitulation of Quebec, General Monckton, upon whom the command devolved in succession to Wolfe, published a manifesto permitting the inhabitants to return to their farms on giving up their arms and taking the oath of fidelity. These conditions most of the people in the villages and districts tributary to Quebec complied with. Writing to Pitt, October 8th, 1759, General Monckton explained that, owing to wounds received at the capture of Quebec, the surgeons had urged him to go south for the winter. He had therefore appointed "Brigadier Murray to act as Governor and Colonel Burton (who is second in Command) as Lieutenant Governor untill His Majesty's Pleasure be known, to which I have added the following very necessary Staff:—

A Town Major

2 Town Adjutants for the upper & lower Towns.

A Secretary.

A paymaster of the publick works.

A Barrack Master.

A Boat Master, to take care of the flatt bottomed Boats and floating Batteries, with some few others of inferior Rank, as Assistants.

As General Wolfe had appointed a Provost Marshal and had delayed giving him a Warrant only for the want of a Form, he being a very necessary officer here, I have given him a Warrant to act as such untill His Majesty's Pleasure be known." A. and W. I., vol. 88.

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dans les dites paroisses, d'y établir . . . justice. Ayant reconnu la bonne vie et mœurs et capacité en fait de justice de M. Jacques Allier, l'avons nommé et nommons juge civil & criminel, pour exercer dans les dites paroisses la justice sauf l'appel en la ville de Quebec devant le colonel Young juge civil et criminel en dernier ressort de la dite ville et païs conquis. Pour par mon dit Sieur Allier, jouir de la dite charge, aux charges, droits et honneurs et prérogatives y attachés—Ordonnons au dit Sieur Allier de recevoir les dites commissions sous peine de désobéissance aprés avoir prêté le serment entre nos mains sur les Saints Evangiles de s'acquitter en foi âme et conscience des devoirs de sa charge.

En foy de quoi nous avons signé ces presentes à icelles fait apposer le cachet de nos armes et contresigner par notre secretaire,—à Quebec—le seize Janvier—mil sept cent soixante—

(Signé)

L. S. JAS. MURRAY.

Par Monseigneur

H. T. CRAMAHÉ—

(Translation.)

By his Excellency James Murray, Brigadier General and Commander in Chief of His British Majesty's troops in the River St Lawrence, Government of Quebec and the conquered territory

It being found necessary for the wellbeing and profit of the inhabitants of the parish of Berthier and those lying beyond as far as Kamouraska inclusive, and for the maintenance of the police and good order in the said parishes, to establish Courts of justice therein, and knowing well the exemplary life, sound morals and capacity for the administration of justice of Mr. Jacques Allier, we have appointed and hereby do apppoint him civil and criminal judge to execute justice in the aforesaid parishes—save in the matter of appeal in the town of Quebec before Colonel Young, the civil and criminal judge in final appeals of the aforesaid town and conquered territory. And that the said Sieur Allier may enjoy the said office with the fees, emoluments, rights, honours and prerogatives thereto appertaining—We order the said Sieur Allier to receive the said commissions under penalty of disobedience, after having taken oath between our hands on the Holy Gospels to perform the duties of his office with all loyalty, zeal and conscience.

In witness whereof we have signed these presents and have set to them the seal of our coat of arms, and have caused them to be countersigned by our secretary at Quebec, the sixteenth of January—one thousand seven hundred and sixty.

L.S. (Signed) JAS. MURRAY.

By Monseigneur

H. T. CRAMAHÉ.

PLACART DE SON EXCELLENCE MONSIEUR LE GÉNÉRAL AMHERST.[1]

Par Son Excellence JEFFERY AMHERST, Ecuyer, marechal de camp, Commandant en chef Les troupes et forces de Sa Majesté le Roy de la grande Bretagne dans L'amérique Septentrionale, et son Gouverneur Général pour la Province de Virginie, &c. &c. &c.

SÇAVOIR faisons, que nous avons constitué et établi Monsieur GAGE, Brigadier des armés du Roy, Gouverneur de la ville de Montréal et de ses dépendances : et que nous avons pareillement étably Monsieur BURTON, Colonel des troupes de Sa Majesté, Gouverneur des trois Rivières et de ses Dépendances.

Que tous les habitants du Gouvernement des trois-Rivières qui n'ont pas encore rendu les armes ayent à les rendre aux Endroits nommés par Monsieur Burton.

Que pour D'autant mieux maintenir Le bon ordre et La police dans Chaque paroisse ou District, il Sera rendu aux officiers de milice leurs armes ; et si par La suite il y avoit quelques-uns des habitants qui Désireroient en avoir, ils devront en demander la permission au Gouverneur, signée par le dit Gouverneur ou ses subdélégués, afin que L'officier des troupes, commandant au District ou ces habitants seront résidens, puisse sçavoir qu'ils ont Droit de porter les armes.

Que par nos instructions les gouverneurs sont autorisés de nommer à tous employs vacans dans la milice, et de débuter par signer des commissions en faveur de Ceux qui en ont dernièrement joui sous Sa Majesté très-Chrétienne

Que pour terminer autant qu'il sera possible tous differens qui pourroient survenir entre les habitants à l'amiable, les dits Gouverneurs sont enjoints D'autoriser l'officier de milice Commandant dans chaque paroisse, ou District, d'écouter toutes plaintes, et si elles sont de nature qu'il puisse les terminer, qu'il ait à le faire avec toute La droiture et Justice qu'il convient ; S'il n'en peut prononcer pour lors il doit renvoyer les parties devant l'officier des troupes Commandant dans son district, qui sera pareillement autorisé de décider entre eux, si le cas n'est pas assés grave pour exiger qu'il soit remis devant le gouverneur même, qui, dans ce Cas, comme en tout autre, fera rendre Justice où elle est due.

Que les troupes, tant dans les villes que dans leurs Cantonnemens sont nourries par le Roy en nature, et qu'il leur est ordonné expressément de payer tout ce qu'elles achetent de l'habitant en argent Comptant et espèces sonnantes.

Que tout propriétaire de Chevaux de Charettes, ou autres voitures qui seront employés, soit par les troupes, ou autres, seront également payés en Espèces sonnantes pour Chaque Voyage, ou par Journée qu'ils auront été ainsy employés, et Cela suivant Le tarif et sur le pied de dix schellings argent de la nouvelle York, par jour, pour chaque Charette ou traineau portant un millier pezant ; et une Journée de Cheval à raison de trois schellings D'york.

Les Maitres des postes auront attention de ne louer ny fournir, a qui que ce soit, sans un ordre par Ecrit de nous, ou des Gouverneurs *Gage*, *Murray*, et *Burton*, ny

[1] Immediately after the capitulation of Montreal General Amherst took measures for the establishment of a provisional military government, with summary courts of justice, until the ultimate fate of the country should be determined.

The French division of the Province into three administrative Districts of Quebec, Three Rivers, and Montreal, was retained. In a despatch to Pitt, dated Quebec, October 4th, 1760, (A. and W. I., vol. 99) Amherst detailed his proceedings, from the day following the capitulation of Montreal. Though most of the measures reported were purely military, yet we have the following items as to civil administration. "15th * * * sent Officers with Detachments to the several Villages, to take in the Arms, and to administer the Oath of Allegiance."

"16th I appointed Col: Burton Governor of Trois Rivieres,"

"19th * * * I gave an Order for the Militia of the Town and Suburbs to give up their Arms and take the Oath of Allegiance to morrow, as soon as Monsieur de Vaudreuil is embarked."

"22d I appointed Br General Gage Governor of Montreal."

On the 22nd he also issued the proclamation or ordinance given above, which is not however enclosed in the despatch but is taken from "Mémoires de la Société Historique de Montréal," 1870, Part V, vol. I, p. 150. A similar proclamation was issued by Amherst in September for use in the District of Montreal. It is dated September, 1760, A. and W. I., vol. 94. Towards the close of the despatch to Pitt he thus refers to the measures taken : "I have fixed the form of Government that I judged would be easiest and best till "the King's Pleasure is known, and if it meets with His Majesty's Approbation, I shall be very happy." *See also note to the next document.*

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chevaux, ny calèches appartenantes aux Bureaux des dites postes, et Ceux à qui il en sera fournis comme ci-dessus, payeront pour un cheval a raison de 17 sols, argent de la nouvelle york, par chaque trois milles angloises ou lieue de france; Ceux qui prendront cheval et calèche payeront le double, mais il leur sera permis d'y aller à deux personnes

Que le peu de secours que le Canada a reçu de la france depuis deux années, l'ayant épuisé de Bien de rafraichissement et de nécessaire, Nous avons pour le bien commun des troupes et de l'habitant recommandé par nos lettres aux differens gouverneurs des Colonies angloises les plus proximes du Canada d'afficher et publier des avis à leurs Colons pour se transporter icy avec toutes sortes de denrées et de rafrachissemens, et nous nous flattons qu'on ne tardera pas de voir remplir ce Projet; et, lorsqu'il Le sera, un chacun en sera instruit pour qu'il puisse y participer au prix courant et sans impots.

Le Commerce sera Libre et sans impots a un chacun, mais les Commerçants seront tenus de prendre des passeports des gouverneurs, qui leur seront expédié gratis.

Comme il est expressément enjoint aux troupes de vivre avec l'habitant en bonne harmonie et intelligence, nous recommandons pareillement à l'habitant de recevoir et de traiter les troupes en frères et Concitoyens. Il leur est encore enjoint d'écouter et d'obéir tout ce qui Leur sera ordonné tant par nous que par leurs Gouverneurs, et Ceux ayant droit de nous et de Luy; et tant que les dits habitants obéiront et se conformeront aux dits ordres, ils jouiront des mesmes privileges que les enciens sujets du Roy, et ils peuvent Compter sur notre protection.

Voulons Et entendons que notre présent ordonnance soit lue, publiée et affichée ès lieux accoutumés.

Fait à Montréal, le 22 7bre. 1760, Signée de notre main et scellée du sceau de nos armes.

(Signé,) JEFFERY AMHERST

(Translation.)

PLACARD FROM HIS EXCELLENCY GENERAL AMHERST.

By His Excellency Jeffery Amherst, Esquire, Field Marshall, Commander in Chief of the troops and forces of His Majesty the King of Great Britain, in North America, and His Governor General for the Province of Virginia, etc., etc., etc.

Be it known, that we have constituted and appointed Mr. Gage, Brigadier of the King's armies, Governor of the town of Montreal and of its dependencies; and that in like manner we have appointed Mr. Burton, Colonel of His Majesty's troops, Governor of Three Rivers and its dependencies.

That all the inhabitants of the Government of Three Rivers who have not yet given up their arms, are to give them up at the places named by Mr. Burton.

That for the better maintenance both of good order and police in each parish or district, their arms shall be delivered up to the officers of militia; and if thereafter there shall be any of the residents who desire to have them, they must ask for a permit from the governor, to be signed by the said governor, or by his subdelegates, so that the officer of the troops, commanding the district in which these persons are residing, may know that they have the right to carry arms.

That according to our instructions, the governors are authorized to nominate to all posts vacant in the militia, and may begin by signing commissions in favour of those who have lately enjoyed such posts under His most Christian Majesty.

That in order to settle amicably as far as possible all differences which may arise amongst the inhabitants, the said governors are charged to authorise the officer of militia commanding in each parish or district, to hear all complaints, and if they are of such a nature that he can settle them, he shall do so with all due justice and equity; if he cannot decide at once, he must send the parties before the officer commanding the troops in his district, who shall in like manner be authorised to decide between them, if the case is not sufficiently serious to require its being brought before the

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Governor himself, who in this, as in every other case, shall administer justice where it is due.

That the troops, in the towns as well as in their cantonments, are provided for by the King in kind, and that it is expressly ordered that they shall pay for all that they buy from the inhabitants in ready money and specie.

That all proprietors of horses, carts or other vehicles who shall be employed, either by the troops, or others, shall likewise be paid in specie for each journey, or by the day, when they shall have been thus engaged, and the latter shall be according to the tariff and at the rate of ten shillings, money of New York, per day for each cart or sleigh carrying a thousand pounds weight, and a horse by the day at the rate of three York shillings.

Masters of posts shall be careful neither to let out nor furnish to any one soever, without a written order from us, or from the Governors Gage, Murray, or Burton, either horses or carriages belonging to the offices of the said posts, and those to whom they shall be furnished, as above stated, shall pay for a horse at the rate of 17 cents, money of New York, for every three English miles or French league; those who shall take a horse and carriage shall pay double, but two persons shall be allowed to go in it.

That the meagre support which Canada has received from France for the past two years having exhausted her wealth, her supplies, and her necessaries, we have for the common good both of the troops and the habitant, given orders in our letters, to the different governors of the English colonies nearest to Canada, to post up and publish notices to their colonists to repair hither with all sorts of provisions and supplies, and we flatter ourselves, that we shall see this project carried out without delay; and, as soon as it is done, everyone will be notified so that he may have his share in it, at the current rates, and without duty.

Trade will be free to everyone without duty, but merchants will be obliged to take out passports from the governors, which will be furnished them gratis.

As it is specially enjoined on the troops to live with the habitants in harmony and good fellowship, we likewise recommend the habitant to receive and treat the troops as brothers and fellow-citizens. It is further enjoined upon them to hearken to and obey all that is commanded them, whether by us or by their governors, and those having authority from us and them; and so long as the said habitants shall obey and conform to the said orders, they shall enjoy the same privileges as the ancient subjects of the King, and they may rely on our protection.

We desire and require that our present ordinance be read, published and posted in the usual places.

Given at Montreal, the 22 7ber 1760, signed by our hand and sealed with the seal of our arms.

(Signed,) JEFFERY AMHERST.

ORDINANCE ESTABLISHING MILITARY COURTS.[1]

Delapart de Son Excellence, Monsieur JACQUES MURRAY, Gouverneur de Quebec, &c.[2]

Notre principalle Intention ayant eté dans le Gouvernement Qu'il a plû à Sa Majesté Britannique de nous confier de faire rendre la Justice a ses Nouveaux sujets, tant Canadiens que françois Etablies dans la ville et coste de ce Gouvernement: Nous avons crû egalement Necessaire d'établir la forme de proceder, de fixer le jour de nos Audiances, ainsi que ceux de notre Conseil Militaire que nous avons établis en cette ville afin que chacun puisse sy conformer dans les affaires qu'ils auront a faire Juger en nos audiances ou celles que nous Jugerons nécessaires de renvoyer aud. Conseil: A ces causes Nous avons reglé et ordonné, reglons et ordonnons par le présent Reglement ce qui suit.

[1] The general system of justice and administration established by Amherst and Murray was approved by the King through the Earl of Egremont, successor to Pitt as Secretary of State, in a despatch to Amherst, December 12th, 1761. This system continued until the introduction of civil government in 1764, and its general character is summarized in the preamble to the Ordinance of 20th September, 1764, which confirmed the judgments given in the military courts.

[2] From "Registre de la cour militaire" folio I. Vol. I. Quebec.

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Art. 1er

Toutes plaintes ou affaires d'interets civils ou Criminels, nous seront faites par placets ou Requetes adressantes a Nous les quels seront remises Néantmoins a M. M. Cramahé Notre Secretaire qui les repondra pour que les Assignations soient ensuitte donnés par le premier huissier aux parties adverses aux fins de comparaitre pour déffendre en notre audiance suivant les Delays marqués eu egard a la distance des lieux

2e

Les Jours de nos audiances seront le Mardi de chaque semaine depuis dix heures du matin Jusques a Midi et se tiendront en notre hotel a commencer Mardi prochain 4 Novembre

3e

Les placets ou Requestes qui auront eté répondués par notre Secretaire dans la forme expliqué par l'art. 1er signiffié aux parties adverses et le delay de l'assignation expirés seront remise à notre secretaire la veille de l'audiance, c'est a dire le Lundi pour l'audiance de Mardi sans quoy elles ne seront point Jugés, et Remise a la prochaine audiance

4e

Les parties adverses qui auront quelques papiers ou écritures servant a la deffense de leur cause seront pareillement tenus de les remettre a notre secretaire la veille de l'audiance sinon sera fait droit sur la demande de la Partie.

5e

Sy les parties assignés n'ont aucune écriture a produire, elles seront tenus de comparoir en notre audiance au Jour de l'assignation, soit en personne ou par procureur, sinon il ne sera donné aucun deffaut, et sera pareillement et sera pareillement fait droit sur la seule assignation qui leur aura eté donné afin deviter la Longueur des procédures et la Multiplicité des frais.

6e

Si la trop grande quantité d'affaires ne pouvoit permettre de les Juger toutes dans une seule audiance, elles seront remises a la prochaine et les parties tenues dy comparoir sans autre assignation

7e

Les Jugements qui seront rendus en notre hotel a l'audiance seront executés sans appel et les parties contraintes dy satisfaire suivant ce qui sera prononcée a l'exception des affaires que nous Jugerons de Renvoyer au Conseil Militaire, pour estre Jugés, les quelles seront remises a un des Conseillers que nous nommerons qui en fera son Raport au Conseil pour sur iceluy estre fait droit a qui il Appartiendra

8e

Le Conseil de Guerre s'assemblera les Mercredi et Samedi de chaque semaine et se tiendra en la maison de M. de Beaujeu rue St Louis.

9e

Les Jugements rendus en notre audiance ainsi que les arrets Militaires seront écrits sur le Registres par le Greffier que nous avons Commis pour cet effet, et les expeditions par luy délivrés aux parties.

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10c

Tout ce que dessus sera éxécuté tant pour la ville que pour les campagnes a l'exception Néantmoins des différents que les habitants des Costes pourroient Avoir entr'eux pour raison de Clostures, Dommages, ou autres cas provisoires, dont nous renvoyons la connoissance au comd' de la troupe dans chaque coste qui les Jugera sur le champ, sauf l'appel au Conseil Militaire sy le cas y échoit et quil y ait matiere.

Et sera le présent Reglement luë publié et affiché tant dans les lieux et endroits accoutumés de cette ville, que dans chaque Costes de ce gouvernement, a ce que personne n'en pretendent cause d'ignorance, et ayt a s'y conformer. Interdisons toutes autres Cours et Juridictions, qui auroient put etre etablies tant dans la ville, que dans les fauxbourgs et Campagnes.

Fait et donné sous notre scel et le contreseing de Notre Secretaire, a Quebec le 31 8bre 1760.

"JA. MURRAY.

"*Par Son Excellence*,

"H. T. CRAMAHÉ."

(Translation.)

By His Excellency Mr. James Murray, Governor of Quebec, etc.

Our chief object having been, in the government which it has pleased His Majesty to entrust to us, to ensure the administration of Justice to his new subjects, Canadian as well as French, settled in the town and neighbourhood of this Government, we have likewise thought it necessary to establish the form of procedure; to fix the day for our audiences, as well as those of our military council, which we have established in this town: to the end that every one may conform to it, in the causes that they may require to have judged at our courts, or such as we may think necessary to send to the said Council. For this reason, we have ruled and ordered by the present regulations as follows:

1st Article.

All complaints, or matters of civil or criminal interest shall be brought before us by petitions, or requests, addressed to us, which shall, however, be delivered to Mr H. Cramahé, our secretary, who shall return them, so that the summons may then be delivered to the defendants by the first bailiff, so that they may appear to defend themselves in our Court, at the time appointed, regard being paid to the distance of the places.

2d Article.

The Court days shall be Tuesday in each week, from ten in the morning till noon, and they shall be held at our residence, beginning with next Tuesday, the 4th of November.

3rd Article.

The petitions, or requests which shall have been returned by our secretary, in the manner explained in the first article, having been served on the defendants, and the term allowed in the summons having expired, shall be re-delivered to our secretary, on the day before the hearing, that is to say, on the Monday, for the hearing of Tuesday: failing this, they shall not be judged, but shall be postponed till the next sitting.

4th Article.

The defendants, who shall have any papers or writings available for the defence of their cause, shall likewise be obliged to deliver them to our secretary, on the day before the hearing, otherwise judgment will be given on the demand of the plaintiff.

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5th Article.

If the parties summoned have no writing to produce they shall be obliged to appear at our Court, on the day fixed, either in person or through an attorney, otherwise no plea will be allowed them for default, and in like manner judgment will be given, on the single summons which shall have been served on them, in order to avoid long lawsuits, and the increase of costs.

6th Article.

If the excessive amount of business does not allow the judging of all cases at a single sitting, they shall be postponed till the next one, and the parties shall be obliged to appear, without other summons.

7th Article.

Judgments which shall be delivered at our Residence at the Court, shall be executed without appeal, and the parties shall be compelled to give satisfaction according to what shall be decreed, with the exception of such cases as we may think fit to send to the Military Council to be tried; which shall be delivered to one of the Councillors whom we shall name, who will make his report to the Council, so that judgment may be given on the same for him to whom it shall belong.

8th Article.

The Council of War shall assemble on the Wednesdays and Saturdays of each week, and shall be held in the house of M. de Beaujeu, rue St. Louis.

9th Article.

Judgments given in our Courts, as well as the military decrees, shall be inscribed on the register, by the registrar whom we have appointed for this purpose, and copies delivered by him to the parties.

10th Article.

All the above shall be executed, as well for the town as for the country; with the exception however of disputes that the habitants of the district may have amongst themselves, with respect to enclosures, damages, or other provisional cases, of which we authorize the commandant of the troops to take cognizance in each locality and try summarily, reserving appeals to the Military Council, if the case pertains thereto, and there is reason for it.

And the present regulation shall be read, published and posted in the usual places and precincts of this town, as well as in every part of this government, that no one may urge the plea of ignorance, and that all shall be compelled to conform to it; and we interdict all other courts and jurisdictions which may have been established as well in the town, as in the suburbs and country.

Executed and given under our seal, and countersigned by our secretary, at Quebec, the 31st October, 1760.

(Signed) JA. MURRAY.

By His Excellency,
(Signed) H. T. CRAMAHÉ.

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SESSIONAL PAPER No. 18

GENERAL MURRAY'S REPORT OF THE STATE OF THE GOVERNMENT OF QUEBEC IN CANADA JUNE 5TH, 1762.[1]

My Lord,—In obedience to His Majesty's Commands signified in Your Lordship's dispatch to Sr. Jeffery Amherst of the 12th December last I have the honor to transmit the following account of His Majesty's Government of Quebec and dependancies thereof; however deficient it may prove Your Lordship may be assured it has been my earnest desire, as it is my constant study to fulfil my Royal Masters intentions.

The better to effect the same, and in order to state the several interesting matters of this Report in the clearest light, I shall divide the whole under the following heads.

1st—Return of His Majesty's Forces in His Government of Quebec and dependancies thereof.
2d—State of the Fortifications
3rd—State of the Government under the French Administration
4th—The Revenues and Expenses.
5th—Church Government.
6th—Indian Nations
7th—Nature of the Soil and its produce
8th—Population.
9th—Trade
10th—Character of the People

I shall subjoin some remarks pointing out the Errors of the Ancient System, and wherein by my own observations and the best information I have been able to procure, there is room for alterations or amendments.

Quebec.

General and Staff Officers.

The Honorable James Murray Esqr. Governor.

The Honorable Lieut^{t} Colo^{l} Maitland D:A:G: Governor Murrays leave to the Southern Colonies.

Lieut^{t} Colo^{l} Irving, Deputy Quarter Master General.

Hector Theop^{s} Cramartie, [Cramahé] Secretary to the Governor.

Lieut^{t} Mills, Town Adjutant

Captain Malone, Barrack Master.

Captain Cosnan, Town Major. Governor Murrays leave to England for the recovery of his Health.

Zachariah Thompson, Captain of the Ports.

Engineers.

Captain Lieut^{t} Spry } Established
Lieut^{t} Montresor }
Captain Holland Assistant.

Officers of His Majesty's Hospital.

Mr. Francis Russell Chief Surgeon
Mr. Field } Mates.
Mr. Mabane }
N-B^{e} Mr. Zachariah Flitner Provost Martial
Benjamin Gable — — Hangman.

[1] In the despatch of Lord Egremont to Sir Jeffery Amherst of 12th Dec., 1761, in which the King approves of the system of military government established in the districts of Quebec, Three Rivers, and Montreal, he instructs him to send, for His Majesty's information, a full account of the newly acquired countries. In response to this command, communicated to Murray, Burton, and Gage, we have this and the two following Reports, which were transmitted to the Government by Sir Jeffery Amherst. These Reports were among the documents submitted to the Board of Trade for their information in preparing a plan of government for the territories ceded to Britain by the Treaty of Paris of 1763. See p. 96.

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2. State of The Fortifications.—Quebec. The natural situation of the ground which the present front of the fortification is built upon towards the land, is very disadvantageous. Cape Diamond is nearest the River S[t] Laurence, and is likewise the highest ground, from whence there is a continued slope, sometimes very quick, toward the River S[t] Charles, in consequence of which the walls not being built upon a level, but humouring the nature of the ground, the flanks of the Bastions cannot defend their opposite faces in a proper manner, for the flanks of the higher Bastions, must fire below the horizontal line, as the flanks of the lower ones must throw theirs above it. To remedy this defect, the French built two Counter guards or Fausse-brays with Casemated flanks, before the right face and flanks of Laglaciere Bastion, and the left face and flank of Bastion S[t] Louis; this however introduced another inconvenience, of which they appear'd sensible when Mons[r] de Levis besieged the Town in 1760, as He directed his fire to this place, which had such an effect, the rubbish of the Wall filling the Counter guard, and that from the lower the ditch, that an easy ascent might have been very soon made to the breach.

The high grounds before Cape Diamond and La glaciere Bastions command all the lower fortifications toward the River S[t] Charles, and batteries for battering in breach may be erected at any distance, as the walls are high and seen in many places to the bottom of the Ditch, there being no covered way or outworks and even the counterscarp wall not well finished, neither can a covered way be constructed, but at a great expense, on account of the scarcity of Earth and irregularity of the ground, besides that it must be crowded with traverses to prevent its being enfiladed.

To make up in some measure the want of outworks, in the Winter 1759, I erected a line of Blockhouses within musquet shot of the capital wall to secure the body of the place against surprises, such outworks are proof against Musquetry only.

The Walls are built of an irregular unwrought stone and in many places the work is very badly executed as was sufficiently visible from the effect of the fire from the French batteries in 1760.

The Gates are ill placed and not defended. S[t] Louis Gate is so near the right face of the Bastion of the same name, that it is beneath its fire, and the opposite flank can have but very little fire on it, that of S[t] Johns has the same fault, being too near the left flank of S[t] Johns Bastion.

The Palace gate is not much better constructed, and in general this whole front of the place, which indeed is the only fortified one, is enfiladed from the other side of the River S[t] Charles.

The Wall from Bastion Lapotasse to Palace gate, is pierced with loop holes, and is good in its kind. The Barracks which are built against it being also provided with loop holes serve as a second fire. This Wall is continued to K and is built upon a Rock.

From K to L is a very bad stockade on the top of an accessible rock, with one small stockaded place of arms. This is the part of the Town most exposed to a coup de main.

From L to T there is a high Wall with a wooden gallery behind it, to serve as a banquette, and beneath it is a sally port to communicate with the lower Town.

From T to the saut au Matelot is a wall begun but carried no higher than Man is able to step upon it, there are some plat-forms for Cannon and Mortars. From M to M (*sic*) is the Royal Battery commanding the River S[t] Laurence and built upon an inaccessible rock adjoining to the Bishop's palace, part of which was taken in during the late siege to defend the communication from the lower to the higher Town, which was also defended by some Cannon planted at O.

From O to P takes in Fort S[t] Louis and a nine gun battery; it is by nature inaccessible except two small paths shewn in the plan. Fort S[t] Louis is of no defense being the remains of the earliest fortifications erected there.

From P to Q the Citadel or Redoubt of Cape Diamond, is a quick or rather steep ascent, defended by a stockade only. Betwixt this Redoubt and the Bastions of La Glaciere and Cape Diamond is a commanding grownd overlooking the whole Town and Fortifications. This grownd I judge very proper for the construction of a Citadel.

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From Q to R the same sort of stockade is continued, and from R to Cape Diamond there is a Wall with loop-holes, defended by two small flanks with Cannon. The rocky hill under these parts is very high, but accessible and in many places cover'd with brush, by the help of which small parties might advance to the very stockades.

The lower Town is only cover'd by a Stockade and some batteries; The Batteries marked q are to defend the road and annoy the shipping in passing the Town. The Batteries t, are for the same purpose. They serve likewise to flank the lower Town and the other Batteries.

From the above report and annexed Plan[1] it appears that the Enceinte of Quebec is very large and would require a very strong Garrison to defend it tho properly fortified - - - That at present it is open on two sides, has no out works not even a cover'd way nor hardly a ditch, for the foot of rotten walls is to be seen from most of the Environs at the distance of 500 Yards. That the whole Rampart is enfiladed from the other side of the River St Charles, and that in its present situation, with a Garrison of 3000 Men it is not proof against a well conducted Coup de Main. Any temporary works that can be added, would be of little signification, as matters now stand; and to fortify the place upon the old plans is by no means adviseable, the situation never can be render'd strong, and the attempt must cost an immense sum - I therefore am of opinion that if His Majesty shall think proper to be at the expense of strengthening Quebec, the most effectual method will be to erect upon the rising ground of Cape Diamond, a Citadel which will answer every purpose of the Towns being strongly fortified, may be defended 4 months at least by a small garrison, awe the Inhabitants, whose fidelity in case of an attack we cannot for some Years rely on, and secure our Magazines. The Ground I propose for this Citadel commands the whole Town and is commanded no where from the Country; in short it possesses every advantages to be wished for, and at a small expense may be fortified, as the Inhabitants of the Country and the Troops in the time of peace may contribute their labor towards it gratis; to this the former can have no objection as they were on all occasions formerly liable to Military services and were all allow'd only provisions.

I order'd Captain Holland to take an accurate survey of the ground and have the honor herewith to transmit the several plans he has drawn in consequence.

I cannot slip the opportunity of recommending this Gentleman to Your Lordship's notice—He came to this Country in 1756, and ever since the siege of Louisbourg I have been myself a witness of his unwearied endeavors for the King's service, in a word, He is an industrious brave Officer, and an intelligent Engineer, in which capacity he would be desirous, and deservedly merits to be advanced.

Jacques Cartier.

This is a small facine fortification upon Cape Sauté, begun by the French during the Campaign in 1759, but not completed 'till the retreat of their Army after the action of the 13th September.—This post served them as a frontier all that ensuing winter, commands the River Jacques Cartier, towards which from the situation of the Ground, it is extremely strong, but it is not capable of the least resistance, if attacked on the other side—It is of no use to us at present, as it no where commands ye main River.

Deschambeaux.

About four leagues above the Jacques Cartier, is the point Des Chambeaux—This place may be fortified to very good advantage, and in my opinion, is the strongest and most important post in the Country. It naturally divides the whole into two parts, is the only road or avenue from lower to upper Canada, on this side of the St Laurence, and commands the rapids of Richlieu; by erecting batteries on the small island of that name, and some fortifications on the South shore the passes by Land and by Water may be rendered equally difficult, which is better explained by the survey and plan of the fortifications hereto annexed.

[1] Plan not given.

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3.—STATE OF THE GOVERNMENT UNDER THE FRENCH ADMINISTRATION.

The Governor General was Chief in all Military, and the Intendant in all Civil, affairs; The latter superintended the justice, police and finances of the Government, he heard and judged difinitively in all trifling causes; appeals from the inspector of Highways were referred to his decision; he issued regulations for the police of Town and Country, and emitted his ordonnances, fixing a price upon all kinds of provisions at his will and pleasure.

For the easier administration of justice, He commissioned three sub-delegates, residing at Quebec, Montreal, and Three Rivers, who took cognizance of such matters as were not very intricate, but from their judgements the parties might appeal to the Intendant.

The Prevôte of Quebec was a Court of Justice, composed of a Lieu^{t} General, a Lieutenant particulier, a procureur du Roy or Kings Attorney; they judged all matters Civil in the first instance, and all appeals from their sentence were brought before the Counseil Superieur, the Prevôte likewise took cognizance of appeals from the private jurisdictions, which could be carried again from this Court before the Conseil Superieur.

In capital crimes, or such as deserved severe penalties, the Lieu^{t} General called into his assistance two of the most eminent Lawyers, but still their sentence could not be carried into execution, untill the same was confirmed by the Conseil, at which seven of the members at least must be present

Attending this Court were six Notaries public a Clerk and six Huissiers, of which one was Cryer.

The Governments of Trois Rivieres and Montreal had each their Lieu^{t} General, a Kings Attorney, Clerk Notaries and Huissiers.

From these several Courts, appeals were brought before the Conseil Superieur, established at Quebec, composed of a first Counsellor who generally presided, and eleven others, of which one or two were priests, these never were present in Criminal matters; The other Officers attending this Court were an Attorney General, a Chief Clerk, and a premier Huissier.

At Quebec was also a Court of Admiralty, consisting of a Lieu^{t} General, Commission'd by the high Admiral of France, a King's Attorney, a Clerk and Huissier, this Court took cognizance of Maritime affairs, and appeals from thence were carried before the Conseil Superieur.

There was also an Inspector of the High Roads or Grand Voyer, who had the regulation of all matters relative to them, difficulties which arose from this Officers regulations were decided by the Intendant.

The only Laws were the Kings Edicts or the Arrets of his Council of State, register'd at the Council Superieur, and the Intendants ordonnances—In matters of property they follow'd the customs of Paris, but in marriage settlements they were at liberty to follow the Custom of any other province in that Kingdom.

The age of Majority was fixed at 25, but at 18 or upon marriage, the Council granted them Letters of emancipation, which intitled them to enter immediately into the enjoyment of the moveable and incomes of their estates—Guardians were chosen by an assembly of seven of the nearest relations of the minors, and for want of these, of so many of their friends.—A public act is drawn out, of this transaction, which is register'd and the person elected is sworn to administer faithfully.

Fiefs.—1st The tenure of Lands here is of two sorts The fief or seigneuries—These lands are deemed noble, on the demise of the possessor, his eldest son inherits one half, and shares with the other Children in the remainder, if any of these die without posterity, the Brothers share the portion of the deceased, exclusive of their sisters; The purchasers of these fiefs enter into all the privileges and immunities of the same, but pay a fifth of the purchase money to the Sovereign who is Lord of the Soil. By Law the Seigneur is restricted from selling any part of his Lands that is not clear'd, and is likewise obliged, (reserving a sufficiency for his own domain) to concede the remainder to such of the Inhabitants as require the same at an annual rent not exceed-

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ing one sol, or one half penny sterling for each Arpent (*a*) in superficies. The Seigneurs have had the right of Haut, Moyenne et basse justice on their several fiefs, but this was attended with so many abuses and inconveniences that the inferior jurisdictions were mostly disused.

Terre en Roture.—2^d^ The Lands conceded by the Seigneurs is the second sort of tenure, and these are called terres en roture.—The property is entirely in the possessors, and the rent they pay can never be raised upon them. They can sell it as they please, but the purchaser is obliged to pay a twelfth part of the purchase money to the Seigneur. The Children of both sexes share equally in those Lands, but if upon a division the several parts are found unequal to the subsistence of a family they are obliged to sell to one another: By Law no man can build upon a piece of Land of less extent than one Arpent and a half in front, upon a depth of 30 or 40. This was done with a view to promote cultivation, and to oblige the Inhabitants to spread, Edicts have been published from time to time, to reunite to the Crown such Lands, as were not settled within a term of years prescribed, the last of these was published in 1732, a copy of which is annexed. (No 1.)

The Canadians are formed into a Militia for the better regulation of which, each parish in proportion to its extent and number of inhabitants, is divided into one, two, or more Companies, who have their proper Officers, Captains, Lieutenants, Ensigns, Majors, Aide Majors, Sergeants etc, and all orders or public regulations are addressed to the Captains or Commanding Officers, who are to see the same put in execution. From these companies detachments are formed, and sent to any distance and in 1759 and 1760 the whole were in arms for the defence of their Country.

Observations.—The Intendant's fixing a price upon provisions at his own will and pleasure, was liable to much abuse, for tho' the Country was abounding with all kind of grain, yet under pretence that a large quantity was wanted for the Kings service, repeated levies were made upon the inhabitants, through every part of the province, proportionably to what it was supposed they could spare, the Intendant paying such price as he pleased to set upon it, great part of which grain was afterwards exported by his emissaries to the French Islands, and when a scarcity was apprehended, they sold the remainder to the public at an advanced price.

Under the pretence of a scarcity of black Cattle, and before the British Troops had made any impression upon the Colony, Horses were killed and served to the Troops, probably to excuse the exorbitant charge for all kind of provisions purchased on the Kings account, for notwithstanding the waste made by two contending Armies, and that the French Troops lived entirely upon the Country for near two Years, we have the strongest occular proof, there was no occasion to have recourse to this expedient, if the Kings officers had not meant it as a Cloak for their Knavery.

2^d^—The members of the Courts of Justice were mostly natives of old France, and minded more their own affairs than the administration of justice. Their decisions were therefore not much respected; and indeed for success the parties generally depended more upon the favour of the protection of the great, than upon the goodness and justice of their cause.

3^d^—Tho' the Governor General, the Bishop and the Intendant, were by their several Offices, Presidents of the Council, and that heretofore they used to be present at their deliberations, in latter times they never honor'd it with their presence, a circumstance that contributed much to the general disesteem, into which this part of the judicature had fallen.

4—The Office of Grand Voyer or Inspector of the High roads, under proper regulations and restrictions seems to be highly necessary for the care and benefit of the interior Commerce.

5—The Canadians mostly of a Norman Race; are, in general, of a litigious disposition; The many formalities in their procedures and the multiplicity of Instruments to be drawn up upon every occasion, seems to encourage this disposition—A short and well digested Code, by laying aside many of these, may in a great measure serve to correct it.

(*a*) An Arpent consists of ten perches each 18 feet French measure.

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6th—Fixing the age of Majority as in other parts of his Majestys dominions, is an innovation that could not fail of being agreeable to the Youth, as the freedom of building where they see convenient, and upon such extent of ground, as they think proper, would be acceptable to all people in general and promote new establishments, especially the Fisheries in the lower parts of the River and Gulph of St Laurence.

4. Revenues and expence of the Government under the French Administration.

Tho' I should properly give a state of the Revenues and expense of the Government of Quebec only, yet the whole under the French administration was so blended together it does not appear practicable to separate the same, and have therefore collected here all that has come to my knowledge on this head, without distinction of Governments. 1st—Five ports, *(a)* part of the Kings domaine which were under the immediate management of the director General of it; He furnished them at the Kings expense with the Merchandize and effects proper for the Indian Trade or Fisheries which were carried on at these several ports and received from thence likewise on the Kings account the Furs, Oil, Fish or other produce of the same.

They had been farmed but the Lease expired in 1756, they were advertised and no one bidding for them on account of the War, the Intendant lest the Indians should quit their usual haunts, ordered them under the foregoing management, which continued untill our arrival, tho' the expense far exceeded the produce.

sterling about	I here set them down at the highest rent paid for them when farm'd, under the French Government....	
£291 : 13 : 4		7,000
2d.........	Duty on Liquors imported	
£ ..0 ,, 0 ,, 10	Wine by the Hogshead......	12
£ :-0 ,, 1 ,, 8	Rum by the Hogshead......	24
	1 Veldt or measure of 2 Gallons of Brandy......	1 ,, 4
	½ Ordinary wine bottled pr Bottle......	1
	1½ Bottled sweet wine p Bottle......	3
	5 Eau de Vie de Liqueur p: Gallon......	10
£8018 ,, 2 ,, 3.	These several duties produced in 1757......	192434 ,, 14 ,, 0.
3d.........	Lots and Ventes. This arises from the sale of Houses and Lands en roture, upon those in the King's possession. The purchaser paying him a twelfth as his immediate Lord.	
£921 ,, 13 ,, 11½.	This produced in 1757......	22,120 ,, 15 ,, 2.
4th.........	Cent et Rentes, or Ground Rents of Houses built on the King's Lands in the City and Suburbs of Quebec.	
¼, ¾, 1¾, 2½.	These are very trifling as they let to the individuals for no more than six derniers, one Sol six derniers, trois sols six derniers or 5 Sols per annum.	
£93 ,, 2 ,, 9.	These were collected in 1759 for 29 Years together and produced only......	2235 ,, 6 ,, 2.
5th.........	Duty (*b*) on dry goods imported	
£3363 ,, 18 ,, 3½	This produced in 1757......	80,733 ,, 18 ,, 4.
	———a Tariff was fixed regulating what each species of goods was to pay, those that were trifling were valued, and paid 3 pr Cent of their Valuation.	

(*a*) Five ports—Tadousac, Chicotini, Mal baye, Islet de Feremie, Sept Isle
(*b*) No 2.

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N.B[e].—Cordage of all sorts, Salt and the produce of the Fisheries, and other Trade in the River S[t] Laurence were exempted from this duty.

6[th]......... Duty on dry goods exported (a)

£1601 " 15 " 0½ This produced in 1757.................. 38,422 " 1 " 5.

There was a Tariff (b) likewise for these in which all kinds of Furs were included as the East India Company had the exclusive privilege of buying and exporting all the Beaver of the Country paying the owner 4 Livres a pound for the green or winter Beaver, and one livre 10 sols for Parchment or Summer Beaver, the Company paid the King a duty of 3 p[r] Cent for the quantity exported according to the above rate.

Duty on the exportation of Moose Deerskins—This duty was of two Livres p[r] Skin, and was the first established in the Colony. The exportation of this Article, has been considerable, but was of late Years much diminished

£56 " 3 " 4. In 1757 it produced.......................... £ 1348 " 0 " 0

8[th]............In 1749, a Tax was laid upon every House within the City and Suburbs of Quebec for repairing the Barracks and keeping the same in order. The reparation was made by the Officers of Justice and a deputy from the Trade approved by the Governor General and the Intendant.

£562 " 2 " 8¼	In 1749 it amounted to....................	13,491 : 3 : 9.
552 " 2 : 6.	" 1750 " to....................	13,351 : – –
578 : 7 : 6.	" 1751 " to....................	13,881 : – –
552 : 2 : 6	" 1752 " to....................	13,351 : – –
570 : 17 : 6	" 1753 " to....................	13,701 :
569 : 8 : 4	" 1754 " to....................	13,666 :
578 : 16 : 3	" 1755 " to....................	13,891 : 10
571 : 7 : 1.	" 1756 " to....................	13,713 : 10
572 : 11 : 6.	" 1757 " to....................	13,741 .. .
563 : 13 : 4.	" 1758 " to....................	13,528 .. .

It is pretty remarkable that notwithstanding the Tax was levied from the Year 1749, inclusive, the King's Edict ordering the same to be raised from the ensuing January is dated only in June 1763.

Besides the foregoing there were certain casual duties, such as—

1[st] Droit d'Aubaine—a Foreigner dying intestate and without Children the King succeeded to his Estate.

(a) All sorts of provisions of the growth of Canada, Goods for the Indian Trade in the lower parts of the River, Horses, Shipping Country built, Timber of all kinds, and Salt Herrings were exempted from this Duty.

(b) No, 2.

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2nd Droit de Deshérences. Likewise to Estates which fall to persons under monastic vows, and therefore incapable of inheriting, or to persons illegitimate who dye without posterity and intestate.

3d Droit d'Epaves—Where Whales or wrecks are drove ashore above the high water mark, all expences first deducted, the King had one third, the High Admiral another and the person who saved it the remainder.

The Receipts in 1757 stood thus.

£8018 : 2 : 3.	To raised on Liquors imported	192,434 : 14 : 0.
921 : 13 : 11½	" " on the Lots and Vents	22,120 : 15 : 2.
3363 : 18 : 3½	" " on dry goods imported	80,733 : 18 : 4.
1601 : 15 : 0½	" " on Do exported	38,442 : 1 : 5.
56 : 3 : 4	" " on Moose Deer Skins exported	1,348 : 0 : 0.
£13,961 : 12 : 10½	Total	335,079 : 8 : 11.

EXPENCE OF GOVERNMENT 1757.

523 : 10 : 0	By duties paid on Liquors imported for the Kings account	12,564 : 0 : 0
2719 : 3 : 9.	By sundry Contingent expenses	65,260 : 0 : 0
3242 : 13 : 9		77,824 : 0 : 0.

The particulars of this sum were

1st Expences of Criminal Suits, apprehending and guarding criminals, Expences of Evidence etc 26004:13:2. This article of expence varied every Year more or less, it seldom exceeded the above and has been as low as 10,000

2d Maintenance of Foundlings and Bastards Children of the Three Governments at the rate of 10 Liv: pr Month 18511:6:8. This likewise varied, one Year it amounted to 24,000

3d Public Works and High Roads 9494:15. This also varied. It has often exceeded 12,000.

4th Expence of Public Prisons and subsistence of Prisoners 11249 : 15 : 2. This article exceeded the usual expence on account of the English Prisoners

653 : 5 : 3½	By the Cantine of the Troops in the Three Garrisons	15,678 : 7 : 2.

This was a Douçeur allow'd the Staff of each Garrison. The Town Major made out rolls of the Soldiers of each Garrison and these were certified by the Comptroller of the Marine. It was supposed three half pints of Wine pr day were imported for their allowance the duty on the amount of which was returned by the receiver General.

This perquisite was shared among the Governors who had one half of it the Staff divided the other half.

	Proportion of the several Governments in 1757.	
	Quebec	8063 : 3 : 7
	Montreal	6122 : 0 : 0
	Trois Rivières	1493 : 3 : 7.
41 : 13 : 4.	By allowed the Attorney General for making out a State of the Kings Rents	10,00 . 0 . 0.
923 : 6 : 11	By Duties paid on goods imported for the Kings account	21,160 : 6 : 3.
1540 : 1 : 6½	By Salaries of Officers and other expences attending the receipt of the Kings Revenues.	36,961 : 17 : 1
£6401 : 0 : 10.		153,625 : 0 : 6

This last article comprehends,

1st (*a*) The Salaries of Clerks, Landwaiters and other Revenue Officers 27,792 : 11 : 6.

2d Usual (*b*) gratifications 1270.

3d By sundry other expences, trifling Repairs

of Office	200 : 0 : 0
House rent of D°	4,000 : 0 : 0.
Fuel for D°	1450 : 0 : 0.
Repair of Canoes	400 : 0 : 0.
Stationary	999 : 0 : 0.
Salary of the Clerk of the Treasurer General of the Marine	600 : 0 : 0.
To a Gauger	250 : 0 : 0.

The foregoing expences were not always the same and were paid upon the Intendants orders, and by his directions in which they differed from the following which was called Etat du Roy du Domaine, and was the Establishment paid by a Yearly order from the King signified by his Warrant signed in Council and which generally amounted to 114,000 Livres or there abouts.

ETAT DU ROY DU DOMAINE.

	By expences of Forts and Garrisons Governor General as Governor of the Town and Castle		
125 : 0 : 0	of Quebec	3000 : 0 : 0.	
157 : 1 : 8½	Pay(*c*) and Provisions of the Garrison	3770 : 0 : 0.	
20 : 0 : 0	Fuel of D°	480 : 0 : 0	
75 : 0 : 0	Lieut^t du Roy	1800 : 0 : 0.	
50 : 0 : 0	Town Major	1200 : 0 : 0	
33 : 6 : 8	Captain of the Gates	800 : 0 : 0.	
460 : 8 : 4½			11850 : 0 : 0.

(*a*) A list of these for 1758, is annexed N°. 3. That for 1757 did not come into our hands.

(*b*) This article of gratification was to reimburse the Governor and other Officers, what it was supposed they paid for duties The Governor General received of this

The Governor General	600	25 : 0 : 0
The Intendant	450	18 : 15 : 0
Governors Secretary	75	3 : 2 : 6
Intendants D°	145	6 : 10 : 0
	1270	53 : 7 : 6

(*c*) As no Garrison was kept either at Quebec, Montreal or Trois Rivières the above were perquisites to the several Governors.

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Montreal

125 : 0 : 0	Governor (*a*)................	3000	
54 : 3 : 4	Pay of the Garrison.............	1300	
83 : 6 : 8	Lieut[t] (*b*) du Roy................	2000	
50 : 0 : 0	Town Major..................	1200	7500 : 0 : 0

Trois Rivieres

125 : 0 : 0	Governor..................	3000	
54 : 3 : 4	Pay of the Garrison..............	1300	
75 : 0 : 0	Lieut[t] du Roy	1800	
50 : 0 : 0	Town Major (*c*)	1200	7300 : 0 : 0
1077 : 1 : 8.			25,850 : 0 : 0

By paid to Religious uses

112 : 10 : 0	To the Clergy (*d*) and in aid of building Churches	2700	
333 : 6 : 8	To the Chapter of Quebec....................	8000	
83 : 6 : 8.	To the support (*d*) of superanuated Priests or Missionaries	2000	
316 : 13 : 4	As a supplement (*d*) to Cures of Poor Parishes...	7600	
554 : 3 : 4	To the Jesuits for their Missions and a Professor of Hydrography........................	13,300	
50 : 0 : 0	To the Recollets of Quebec....................	1200	
62 : 10 : 0	To the Convent of Ursulines...................	1500	
312 : 10 : 0	To the Convent of the Hôtel Dieu.............	7500	
83 : 10 : 0.	To the Convent of the Hospital General........	2000	45,800 : 0 : 0

At Montreal

83 : 10 : 0	To the Hospitalieres..........................	2000	
125 : 0 : 0	To the Filles de la Congregation..............	3000	
	By the Salaries of Officers of Justice		
20 : 16 : 8	To the first Conseiler of the Conseil Superieur (*e*).	500	
187 : 10 : 0	To 10 others at 450 each (*f*)................	4500	
62 : 10 : 0	To the Attorney General.......................	1500	
29 : 3 : 4	To the Greffier...............................	700	
4 : 3 : 4	To the Huissier...............................	100	12,300 : 0 : 0
3498 : 5 : 0.			83,950 : 0 : 0

Salaries of the Officers of Prevôte of Quebec.

29 : 3 : 4	Lieut[t] Gen[l] Civil and Criminal (*g*).............	700	
25 : 0 : 0	Lieutenant Particulier........................	600	
12 : 10 : 0	Proceurer du Roy..............................	300	
4 : 3 : 4	Greffier......................................	100	17,00 : 0 : 0

(*a*) This Officer had by way of gratuity from the Marine Chest 1000 Livres and ½ p[r] Cent from the East India Company on the Beavor they exported amounting to about 1500 more.

(*b*) The Lieutenants du Roy had each 1800 Livres, the Senior of these had a gratuity of 200 besides, the Lieut[t] of Montreal was the senior in 1757.

(*c*) The Town Major had a perquisite of 2 Barrels of Powder each for the use of their Garrisons, but as they did not exist, they received each in lieu thereof from the Storekeeper 250 Livres. Each Gov[r] also paid his Town Major 100 Livres for signing the Rolls.

(*d*) (*d*) (*d*) These were distributed by the Bishops.

(*e*) Of late Years he had a Gratuity of 450[lb] from the Marine

(*f*) There was a vacancy of one this Year. The Salary of Three Eldest had of late Years been augmented with a gratuity to each of 150 Livres also from the Marine

(*g*) This officer had of late Years obtained an addition of 300 Livres out of the Marine fund.

	Montreal.		
18 : 5 : 0	Lieutenant Gen^{l} Civil	450	
10 : 8 : 4	Proceurer du Roy	250	700 : 0 : 0
	Trois Rivieres		
18 : 5 : 0	Lieutenant Gen^{l} Civil	450	
10 : 8 : 4	Proceurer du Roy	250	700 : 0 : 0
	Salaries of the Officers of Police		
25 : 0 : 0	To the Grand Voyer (*a*)	600	
20 : 16 : 8	To the Prevost des Marechaux de France (*b*)	500	
12 : 10 : 0	To an exempt under Him	300	
29 : 3 : 4	To 4 Archers (*c*) 175 Livres each	700	
13 : 15 : 0	To a Hangman	330	2430 : 0 : 0
3728 : 6 : 8.			89,480 : 0 : 0
	By expenses of the Hospital at Quebec.		
50 : 0 : 0	Salary to a Pysician	1200	
50 : 0 : 0	First Surgeon	1200	
33 : 6 : 8.	Second Surgeon	800	
25 : 0 : 0	Midwife	600	3800 : 0 : 0
	By Sundry extraordinary expences		
41 : 13 : 4	Publication of the decrees of Council	1,000	
4 : 3 : 4	Expences of Fuel (*d*) in y^{e} Council room	100	
8 : 6 : 8	Travelling Charges of the Archers	200	
20 : 16 : 8.	Allow'd the Bishop in lieu of Duties paid by him	500	1800 : 0 : 0
50 : 0 : 0	By paid to the Establishment of Louisberg, a Pension to the Count of Gacé son to the Marquis of Matignon in lieu of some land taken into the Kings hands	6000	
333 : 6 : 8	D° to the Religious Brothers of la Charite	8000	
62 : 10 : 0	D° to the Nuns of La Congregation	1500	
50 : 0 : 0	D° to 4 Councellors at 300 each	1200	
16 : 13 : 0	D° to the Proceureur General All at same place.	400	17,100 : 0 : 0
83 : 6 : 8	By a pension to a Botanist at Louisiana		2000 : 0 : 0
4757 : 10 : 0	Total of the Etat du Roy		114180 : 0 : 0

THE SALARY AND PERQUISITES OF THE GOVERNOR GENERAL.

£500 : 0 : 0	From the Marine Funds appointments	12000
125 : 0 : 0	From D° allowance for freight of necessaries from France	3000
125 : 0 : 0	From the Domaine as private Gov^{r} of Quebec	3000
157 : 1 : 8.	From D° Pay of the Garrison	3770
25 : 0 : 0	From D° in lieu of what he paid for duties	600

(*a*) This Officer had likewise an allowance of 10^{lb} p^{r} diem extraordinary when upon his duty. If the Inhabitants applied to him to make out roads for their own private advantage they were at all the expences attending the same.

(*b*) This Officer likewise had an allowance of 7^{lb} 10^{s} p^{r} diem travelling charges when out upon the execution of his office.

(*c*) These were severally allowed 3^{lb} p^{r} diem when sent in pursuit of Deserters or other Criminals.

(*d*) This was a perquisite to the Lieutenant General and as the firing would have cost three times as much, the Intendants supplied the same out of the King's Yard.

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	From the Marine a Company of Guards Call'd the Carabineers to attend him They had usually two or three, and public or state days they found people enough to complete the number.—They consisted of	
58 : 6 : 8	A Captain at	1400
41 : 3 : 4	Lieutenant	1000
25 : 0 : 0	Ensign	600
233 : 15 : 0	17 Private at 27lb pr Month	5610
250 : 0 : 0	From the E : India Compy a present of 2 pr Ct on all the Beaver exported by them, valuing the whole upon an average of 2lb pr pound. This varied every Year but upon a medium may be set down	6000
167 : 19 : 2	His share of the Cantine as set down above. This likewise varied in 1757 it produced	4031
83 : 6 : 8.	For Belts of Wampum presented by the Savages to the Governor at the several Conferences he had with the different tribes which Belts he sent to the Kings stores to be worked up into another Form, and for which the King paid him	2000
1792 : 2 : 6		41011

The Salary and Perquisites of the Intendant.

500 : 0 : 0	From the Marine appointments	12000
125 : 0 : 0	From Do allowance for Freight of necessaries from France	3000
18 : 5 : 0.	From the Domaine in lieu of duties he paid	450
187 : 10 : 0	From the E : India Compy a present of one and a half per Ct on all the Beaver exported by them at a medium	4500
50 : 0 : 0	From the Marine allowance for a Secretary	1200
50 : 0 : 0	From Do for a Gardiner	1200
930 : 15 : 0		22,350
13,961 : 12 : 10½	From the foregoing it appears that the Country duties raised in 1757 together with the other Revenues belonging to the King produced that Year the sum of	335,079 : 8 : 11
11,158 : 10 : 5¼	From which deducting the Etat du Roy amounting to 114,180. And the expences ordered on this side by the Intendant 153,624 : 10 : 6	267,804 : 10 : 6
2,803 : 2 : 5¼	Remained a surplus of	67,274 : 18 : 5

Which surplus when there was any, was paid by the Receiver General of the Kings domaine, into the hands of the Commis of the Treasurer General of the Marine as an addition to that Fund, out of which all the general expences were paid. Such as the Subsistence and provision of the eight Battalions, Forty Companies of Marines and Detachment of Royal Artillery serving in Canada, the officer of the naval Yard of Quebec, and in short all the ordinary and extraordinary expences attending the Military and Civil Government of Canada the officers of the Court of Admiralty only excepted, who were paid by the High Admiral of France.

The expence of Government in this Country was formerly very moderate, for a series of Years to that of 1726, it never exceeded 360,000 Livres; the two ensuing ones it was advanced to about half a Million, on account of the Colonies being at War at that time, with the Indian nation of Renards. From this period it gradually increased

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to a Million, and from the breaking out of the war with Great Britain in 1744, till peace was concluded with her in 1748, the annual expence amounted to about 2 Millions.

In the month of August in that very Year the late Intendant M^r Bigoe came over, the expences have ever encreased and to 1753 inclusive did not amount to less than three, four, or five Millions every Year.

	In 1754 Bills were drawn on France for............	6000,000
	1755 ..	5,500,000
	1756..	8,000,000
	1757..	12,000,000
	1758 ..	24,000,000
	1759..	30,000,000
	1760 The Intendant was directed not to exceed two Million four hundred thousand Livres and drew only for..........................	1,300,000
	To the above is to be added the Paper Money remaining in the Country, and for which no Letters of Exchange have been drawn......	22,000,000
4,533,333, 6 : 8	..	108,800,000
3,333,333 : 6 : 8	Of the whole upon the most moderate computation, at least 80 Millions are still owing	

The manner of transacting the business is thus. The Intendant for every expence emitted the ordounances, which passed current with his bare signature only, one of which, (No 4.) is annexed to shew the nature of it ; in August notice was given to the proprietors, to bring into the Treasury within the Month of September, and untill the 10^th of October, the Ordonnances in their possession, for which they took the Treasurers receipt, and commenced drawing the Letters of Exchange, which continued fifteen or twenty days, or till the navigation was shut up.

From the Year 1740, to that of 1746 Letters of Exchange were drawn only for three fourts of the value brought into the Treasury ; these indeed payable in 6, 7, 8, or 9 months, when they were duly discharged, the remaining fourth was reimbursed the proprietors, by a Card Money, of which there is to the amount of near a Million still existing in the Colony.

From 1746, to 1752, Letters of Exchange were drawn for the full sum brought into the Treasury and were all made payable sometime within the ensuing Year.

But the expences having encreased considerably orders were given to divide those of the Year into three equal parts payable in 1, 2, or 3 Years this was put in execution in 1753, but the very Year following another arrangement took place ; only one fourth part was made payable in the course of the ensuing Year, one half two Years after that and the remaining fourth in three ; and this Method was ever after observed 'till the Year 1760. By this means a great number of those drawn in the preceding Years, were not come in course of payment, when the Kings Arret of October 1759 suspended payment entirely

NB^r the Clerks of the Marine and other Officers employ'd in that department, having left the Country it has not been possible to procure certain accounts of the expences of that branch.

Throughout these calculations and in every other part of this Report, The French Livre to avoid Fractions is esteemed at ten pence Ster^ls

Observations

1^st I had the Honor to inform the Lords of the Treasury very fully of the state of the Kings ports, in a Letter to M Martin their Secretary, of the 7^th November last, at the same time that I transmitted all accounts relative thereto by M^r Ainslie whom I intrusted with the management of them untill I could receive instructions from home, I am thoroughly persuaded the proposal I therein made to their Lordships of selling

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them to the highest bidder, for a Term of Years, is the surest expedient to make them profitable to His Majesty.

2—The duty on Liquids will ever bring in a considerable sum, for tho' the Canadians in general are not much given to drunkenness, Yet Men, Women and Children are used to drink a certain quantity of strong Liquors, the severity of the Climate having probably introduced this practice. By the great improvement likely to be made in the Fisheries the consumption of these will considerably increase.

3—As the Canadians seem thoroughly reconciled to the use of British made Corn spirits, the consumption thereof could suffer no diminution, from a moderate duty upon the same of 6^d^ p^r^ Gallon, and that of Rum or New England Spirits might be raised to a Shilling, this would check the importation of the latter and favor that of the former, that the Revenue may not suffer by this measure, it will be necessary to prevent any attempts which may be made of smuggling by the Lakes while they are navigable as well as when they are to be travelled over with carriages.—The like precaution will be necessary to be taken for the lower part of this River, which abounds with little bays, Creeks, and Rivers favorable for such practices, as detrimental to the fair Trader as to the state itself.

4^th^—As there have been few or no purchases made since we have been in possession of Canada, the people having no money and being uncertain of their fate, the Lots et Vents, have produced nothing considerable; when a settlement takes place this branch of the Revenue will probably receive a large encrease.

5—The tax upon Horses in the City and Suburbs of Quebec for the support of the Barracks, could not be levied upon the Inhabitants since the Town has been in our possession, as great part of it was in ruins, and many of these who were fomerly wealthy have been reduced to great distress thereby, besides that it might prove a disencouragement to the rebuilding it

6—As probably it may be thought right, not to receive the duties on dry goods, a Tax upon Horses might be introduced in lieu thereof, it would serve also to restrain a piece of luxury the people of this Country are too apt to run into, in that respect, and prove a means to encourage the breed of horned Cattle of which at present by the unavoidable waste of War, they are very short, besides, as Cattle must be housed here for a long time during the Winter, the Horn'd kind are fodder'd with more ease, less cost, and afford a double utility.

7^th^—The small salaries given by the French Government to the Civil Officers in general made them neglect their duty and wreck their invention to cheat and trick both King and People; This was carried to such a length that many instances may be cited of clerks and men in petty Offices with Yearly Salaries of only Six or Eight Hundred Livres, raising to themselves in the compass of three or four Years Fortunes of three or four hundred thousand.

8.—Before I close this article I must add that the duty on Wine may be easily revived without distressing the people or lessening the consumption, as there is no doubt that an additional one may be raised hereafter upon spirits. But it must be observed, that the lighter the burthens are laid at present upon the people, the more it will ingratiate their new Masters, the more it will enable them to repair their past losses and the sooner they will be in a condition to contribute a proper portion to the public expences.

5^th^

Church Government

The Bishop.

When the Bishoprick of Quebec was first established in 1764, the See was endowed by Louis the 14^th^ with the Revenues of two Abbacies, those of Benevent and L'Estrees; about 30 Years ago the Bishop then finding it difficult, considering the distance, to recover the revenues of them by consent of Louis the 15^th^ resigned the same to the Clergy of France, to be united to a particular revenue of theirs stiled the

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Economats applied to the augmentation of small livings. In consideration of which the Bishop of this See has ever since received 8,000 Livres out of the said Revenues. A few Years before the late Bishops death, the Clergy of France granted him for his life only a further pension of 2000 Livres. The Bishop had no estate whatsoever, except his palace in Quebec destroyed by our Artillery, a Garden and the Ground rent of two or three Houses adjoining it and built upon some part of the land.

The Chapter of Quebec.

The Chapter consists of a Dean and twelve Canons; Their revenue consisted of an Abbacy in France which brought them in about 4000 Livres and a pension from the King of Eight Thousand paid out of the Domaine, The whole was divided into fourteen shares of which the Dean had two.

There is one vacancy in the Chapter, the present Dean the Abbé de la Corne, a Canadian and five of the Canons are in France.

Parish of Quebec.

The Town and Suburbs form but one parish which is very extensive and is served by a Curé and two Vicars under him. The Church is Parochial as well as Cathedral, no part of it is left standing but the bare walls; a Chapel of ease in the lower Town was likewise burnt during the Siege. The people at present perform their devotions in the Chapels of the several religious communities. Some part of the Lordship of Quebec is the property of the Cathedral or parish Church, stiled here La fabrique and is appropriated to the repairs of it: a dispute subsists between the Chapter and the seminary about the nomination of the Curé, the affair was to have been judged by the King but was still undetermined.

The Jesuites

They possess a large commodious House, a handsome Chapel and a spacious Garden within the upper Town, the House and Chappel suffer'd a good deal from our artillery, but might be easily repaired; no other place in the Town being so proper, it has and is still made use of as a Magazine of Provisions. For this reason it was necessary to dislodge the Fathers the first Winter, less their turbulent and intriguing genius should prompt them to play some Trick which might have proved fatal in the critical situation of affairs and which they could perhaps have easily compassed had they been suffer'd to reside in the House. After the capitulation of Montreal they were readmitted and conveniently lodged in one wing of it and have freely consented to His Majesty making use of the remainder.

Their particular province is the instruction of Youth and the Missions of the Savages, the King allow'd them on account of the latter, 13,300 Livres.

They have a very large estate in the Country and hold some lands in the Town en Roture, but are Lords of very large tracts in this Government, and of very considerable ones in the other two. They possess in that of Quebec the best part of the large and rich parish of Charlebourg, that of Lorette and most of S^t Foix. By the best accounts their revenues cannot be short of 30,000 Livres p^r annum and most probably exceed it; of which in this Government about Eleven Thousand. They have only two Missions here, one to the Hurons at Jeune Lorette near Quebec, the other to the Montaignais at Tadousac and Chicoutimi. The whole number in Quebec Govern^mt the two Missionaries included is 9. The Superieur is nominated in France and holds the Office generally six Years.

The Recollets

This is an order of Mendicant Friars who possess nothing of their own but a House and Garden in the upper Town. They had a piece of ground in the suburb of S^t Rock on which they had formerly a house and church, which has been abandoned for some Years. A small part of the Intendants buildings is erected upon a piece of this Land,

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in consideration of which under the French Government they were paid fifty Louis a Year from the Marine by way of charity as they can receive no rents. They acted as Chaplains to the Army, and at the several Forts or posts and failure of regular Clergy served the vacant Cures.

They have a provincial Commissary resident here, who superintends the whole order in Canada, sent from France and changed every three Years. The present one has discharged it twice, on account of the War. They have in this Government.

Fathers 10
As Servants or Brethren.... 9——19

Seminary Quebec.

These are Secular Clergy: Their institution is to educate the Youth and fit them for the priesthood. They have a large House and Chapel in the City of Quebec, both in a ruinous condition ever since the siege of 1759. It is a dependance upon the seminary for Foreign Missions at Paris, who nominate the superiors and directors of that of Quebec, but their estates are not entirely distinct; besides the Island of Jesus in the Government of Montreal, they possess part of the Lordship of Quebec & the whole extent of the country from the Saut de Montmorenci to the Riviere du Goufre in the Bay of S^t^ Pauls inclusively and the Island of Coudres. This immense tract does not bring them in very considerably, their great Revenues in these parts arising from the two large Farms in the Parish of S^t^ Joachim, where before the breaking out of the war, they had between three and four hundred head of Cattle; on their estate in the Bay of S^t^ Pauls they discover'd some Years ago a Lead mine, the Veins which have been tried are slight, but two Germans who were brought over to the Country, on account of the like discoveries in the upper Country, examined this and thought it worth working; the War has prevented making further Essais upon it. The income of their estate in this Government may be estimated at about 9,000 Livres p^r^ Annum They consist at present of only the Superior and four directors.

Convent of the Hotel Dieu of Quebec

This is a community of women, particularly instituted for the care of the Sick; They had been in good circumstances but their House having been entirely consumed by Fire, a few Years ago, they are considerably indebted for the rebuilding of it.

This house has two distinct estates and Purses, the one belonging to the community, the other to the Poor—The former owes about 108,000 to different Artificers, and for sums borrowed towards rebuilding the Convent.

They have a Rent charge upon the Hotel de Ville at Paris which brings them in..........	1330 Livres
A Seigneurie in Charlebourg with estates & gardens in this Town..........	3500
For its share of the 7500 p^d^ by the King..........	3000- - - -7830

They keep some pretty large Farms in their hands Cultivated by their domesticks, out of the produce whereof they are at present chiefly subsisted.

Number of Nuns..........	36

The Poor have a charge on the Hotel de Ville at Paris

Foundation of a Dutchess D'Aiguillon..........	646 : 12 : 0
The Lordship of S^t^ Augustine..........	1200 : 0 : 0
Their other estates in the suburb of Quebec including a small one in the Island of Orleans produce about..........	500 : 0 : 0
Their part of the Kings bounty was..........	4,000 : 0 : 0
	6,346 : 12 : 0.

They are not at present in circumstances to take in any.

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Convent of the Ursulines at Quebec.

This is likewise a community of Women, their institution is for the education of Young Girls.

They have a Rent charge on Hotel de Ville at Paris..	1400 : 0 : 0
A Farm in Normandy....	950 : 0 : 0
The Lordship of Portneuf in this Country and S^t Croix, about....	772 : 0 : 0
Their other estates in and about Town....about.....	960
Nuns 38.	4082 : 0 : 0

The chief estate of this community consists in their Boarders, and a number of little ingenious works, for which there is a great demand, by means of which they are enabled to live very decently and comfortably.

The General Hospital near Quebec.

This is a community of Women, they have a Foundation for taking care of Thirty Invalids, Idiots or Incurables, which they are at present in no condition to fulfil, their revenues being no way equal to the expence, and as a large sum is owing them by the King of France for the sick of his army. In the time of the French they were allowed rations for as many of the above as they took in and a pension of 2,000 Livres. The Ladies of this community are of the best Families in Canada and by the presents they were continually receiving from them they were chiefly enabled to subsist; That revenue is now at an end, as the Gentry in general are at present in the most distressed circumstances.

They owe a very large debt contracted in a good measure for the support of the sick Officers and Soldiers of the French Army. The French King owes them a large sum, sufficient to discharge it, but they must be reduced to the utmost beggary and distress if he does not; The sale of all their houses and Lands will scarce be sufficient to satisfy their Creditors.

Their whole estate in this Country does not bring them in at the most above....	5000 Livres.
A rent on the Hotel de Ville at Paris....	1800- - - -6,800.

Their Number	Nuns....	33
	Invalids....	33—66.

Les Filles de la Congregation

This was an institution for teaching Young Girls to read and write; they take the vows but are not cloister'd and go abroad about their affairs. They are poor. However besides what they possess in the other two Governments they had a House in the lower Town destroy'd by our Artillery, one at Point au Tremble and one with a small Farm at S^t Famille in the Island of Orleans.

Their number at present in this Government.... 4.

This Government is divided into 50 Parishes some of which are small, and not thoroughly inhabited as Yet: For want of regular Clergy, several of the Recollets serve Cures, and in some places one Curé serves two, the whole is under the inspection of a Vicar General at present, during the vacancy of the See.

Observations.

1^st The Canadians are very ignorant and extremely tenacious of their Religion, nothing can contribute so much to make them staunch subjects to his Majesty as the new Government giving them every reason to imagine no alteration is to be attempted in that point.

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2. . .Care was taken under the former Government to keep up a great part of the Clergy French, especially the dignified part: To prevent the further importation of these, it would be necessary to encourage the natives to engage in the profession, which cannot be so well done, except the See is filled up, as without a Bishop there can be no ordination: some difficulty will attend this, as it is unendow'd tho' hereafter means may be found of making up this deficiency.

3d. . .A like difficulty occurs in relation to the Chapter, their number indeed might be reduced by letting the vacancies lye dormant, if some provision cannot be made for them as will hereafter be proposed.

4th. . .An expedient to assist the people in rebuilding their great Church, would much ingratiate their new Masters with them.

5th. . .The Jesuites are neither loved nor esteemed in general, and this order may be easily removed whenever the Government shall think proper without giving offence, out of part of their Estate provision might be made for the Bishoprick, and Chapter which would ease the Crown of further expences on that head.

6th The Recollets is an order of Mendicants, as they depend upon charity for subsistence, they are careful not to give offence; probably should they find the Inhabitants upon the present change, cool towards their Order, they will of themselves seek a better living somewhere else.

7th The Seminary educates the Youth, and fits them for Orders, it will be necessary to preserve and encourage this House on that account, and it is to be observed, this was the only Religious House or order, that heretofore did not participate of the French Kings Bounty.

8th As to the communities of Women they are much esteemed and respected by the People, the narrowness of their circumstances will probably prevent their being filled up so easily as in former times; when the Canadians become a little more reconciled to British customs and Government, it may not be amiss under colour of serving those communities in their distressed situation, to restrict the admission of any under a certain sum; this regulation with another fixing a certain age, under which no vows to be taken, would probably soon reform the worst abuses of such institutions.

9th. . .There are some few French Protestants in this Country who no doubt will be willing to remain, it would be a great comfort to these, if a Church was granted for their use, and some French Clergyman of sound sense and good Character, with a tolerable salary, was invited to settle among them, such an establishment may be attended with the further good consequences of enticing many of their Brethren in France, to come and enjoy that religious liberty, after which they so ardently sigh, amidst a people sprung from the same origin, speaking the same language, and following the same Customs. It may likewise be conducive towards bringing about a Reformation, by slow degrees and must at least prove to the Canadians there is nothing in our Holy Religion repugnant to Virtue or Morality.

6th

Indian Nations residing within the Government

In order to discuss this point more clearly I shall first take notice of the Savages on the North shore of the River St Laurence from the Ocean upwards, and then of such as inhabit the South side of the same River, as far as the present limits of the Government extend on either side of it.

1st The Savages on the North shore. The first to be met with on this side are the Esquimaux, these are the wildest and most untamable of any, and are emphatically stilled by the other Nations, Savages. They never dress their food but eat fish rotted in the Sun and drink the oil it produces. Travellers represent them hardy, active and expert navigators: In the summer they come with their whole Families in Chaloups to fish in the streights of Belisle, these they leave in the Bays, and go out themselves to a considerable distance in Canoes made of skins wherein they sew themselves up. Their

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clothes and sails of their Vessels are made of the skins of wild beasts; They are reckoned treacherous, and have had many encounters with the French and Canadians employ'd on the fisheries in those parts. Their Language is not understood but a few words they make use of nearly resemble the dialect of some of the most northern European Nations. A few here have trafficked with them and made a considerable advantage by it, but they never agreed well together; any trade with the Esquimaux however must be precarious; The Coast is rocky and difficult of access, the season for navigation short, and the risks too great to entice adventurers; they have never been known to come on this side of La Forteau.

2d—The Montagnais or Monsonies inhabit a vast tract of Country from Labrador to the Saguenay; they are again distinguished into those who live in the inland parts call'd Nascapies, and the inhabitants of the water side, for this reason stilled Chuchoux-lapishouets. They take as many different names as they have Villages but are all the same people, and speak the same language. As in the interior parts of the Country there are many Lakes and Rivers which communicate with Hudson's bay, the former often trade on that side, which the latter also would have been obliged to do, if the interruption caused by the War, had continued for any time, tho' from the more convenient situation, they would have ever reverted to those who were Masters of the River St Laurence, those are the mildest and most tractable of all Savages and never enter into War. Tho their country is extensive their number is inconsiderable; From Labrador to Mingan the Traders do not reckon more than from Eighty to one Hundred Families, and of those who resort to the King's Posts, there may be about 220 Families in all, but as their habitations are easily moved they are ever changing and shifting from one place to another.

A Jesuit Missionary meets them at Tadousac when they come there for the trade and he resides in the neighbourhood all the Year.

3d....The most civilized of all the Indians in this part of the World are the Hurons settled at a little Village called Jeune Lorette about 3 leagues from Quebec. These are called Roman Catholicks and are a decent well behaved people, it is now many Years since they were removed there from their ancient habitations about Lake Huron or Erie, are settled upon lands belonging to the Jesuites, and live in much the same manner as the Canadians. They have excellent good Houses, Cultivate their own lands and live upon the produce: In the Hunting season they go into the woods and hunt themselves or traffic with the more remote Indians for their Pelletries. Some of the Elders have been so tenacious of their Mother tongue, they hardly speak a word of French, but most of the Younger ones speak it tolerably well; indeed it has ever been the policy of the French Government to make them retain that and as much of their ancient customs as possible, that they might prove of greater use to them in case of war with other nations, at the same time they endeavour'd to attach them to their Interest by every tie. A Missionary resides among them, they have a neat Chapel, where divine service is constantly performed at which all the Savages assist with a punctuallity and decorum worthy of imitation by more enlightened people; They seem to be well satisfied with the change of Masters, and were so particularly pleased at their Village having been spared during the Winter 1759, tho' forced by the French to abandon it, that they never could prevail on them to act with any degree of vigor against us. They have at present but 32 Warriors and the whole Village, Men, Women and Children are short of 100. Their number is decreased at least one half within these forty Years, and the Tribe would by this time have been almost extinguished but for the supplies they got by captures in War, and the sale of unhappy infants whose Parents chose to conceal their own shame at the expence of such iniquitous bargains.

2d *Savages upon the South Shore.*

These have wandered about the Country so very much and have been so unsettled by the continued Wars and frequent revolutions that have happen'd in this part of the Continent, it is hard to give any tolerable account of them at this time. By the

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best informations we have been able to collect, the Miamies were settled, and some are still, about the Bay des Chaleurs, and upon the Coast and Bays in the Gulph, they are not at present numerous. In 1759 about one hundred of them joined the French.

The Kanibas and Malecites, inhabit about the Rivers S^t John and Pentagouest; their Language and that of the Abenakies is pretty nearly alike, and the three Nations are a good deal intermixed. The latter were settled about Narantsauc and Panaouanské, now wander about the South shore, and range the woods as they find it best answer their purpose, with those of the same tribe at S^t François and Beaconcour in the Government of Trois Rivieres, it is computed they may amount to twelve or fifteen hundred families and in 1759 about 600 fighting Men of these Nations joined the French army near Quebec.

Under the French these were the only Indians who resorted to this place, where they received from the Government presents of Powder, Shot, Vermillion and other trifles; in time of War Clothing and Provisions.

Montreal was the chief seat of the Fur-trade and the greatest concourse of remote and back Indians or of those who traded with them, was there. There the Governor General used to meet and confer with their Chiefs and all business relative to them was mostly transacted.

From the Governor of Montreal therefore Your Lordship will certainly get fuller and better accounts on this head than I can possibly give. (*a*)

I have and ever shall be attentive, that due justice as far as in my power shall be done to them; few Complaints have as yet been made, when there have been any they have met with instant redress.

7^th

Nature of the Soil and its Produce.

With a very slight cultivation all sorts of grain are here easily produced, and in great abundance, the inhabitants are inclinable enough to be lazy, and not much skilled in Husbandry, the great dependancies they have hitherto had on the Gun and fishing rod, made them neglect tillage beyond the requisites of their own consumption and the few purchases they needed, the Monopolies that were carried on here in every branch, made them careless of acquiring beyond the present use, and their being often sent on distant parties and detachments, to serve the particular purposes of greedy and avaricious Men without the least view to public utility, were circumstances under which no country could thrive; As they will not be subject to such inconveniences under a British Government, and being necessarily deprived of arms they must of course apply more closely to the culture of their Lands.

The mines already discover'd, and the mineral and sulphurous waters in many parts of this Country leave no room to doubt, nature has been bountiful to it in this respect, and that further discoveries and improvements are likely to be made with regard to these, whenever it becomes more populous. Notwithstanding the waste of war, which they have much more severely felt from their pretended friends, than from their declared foes, the Country will abound in three or four Years with all kind of provisions, sufficient not only to answer their home consumption, but even to export if a Market can be procured

Observations

1^st . . . They grow both Hemp and Flax in some parts of the Country, and many of the Lands are well cultivated for this Production. It will be right to turn the thoughts of the people towards the cultivation of this article, so essential to Great Britain and for which she annually pays great sums to Foreigners, a few premiums properly disposd of, some Germans and Russians skilled in raising and preparing the same and encouraged for that purpose to become settlers here may in a short time greatly improve this most useful branch of Agriculture..

(*a*) No 5. Extract of a Letter giving some account of the Trade of the upper Country.

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2[d] . . This will be one means of employing the Women and Children during the long winters in breaking and preparing the flax and Hemp for exportation, will divert them from manufacturing coarse things for their own use, as it will enable them to purchase those of a better sort manufactured and imported from Great Britain.

8[th]

Population

The present state of population may be easily seen by the annexed (*a*) Account of the number of people in this Government taken about a twelve month ago

There is great reason to believe this Colony has been upon the decrease in this respect for near twenty Years past, the Wars which they have been almost constantly carrying on, the strictness with which Marriages within a certain degree of consanguinity were forbidden except by dispensation, the obliging Strangers inclined to engage in that state, previously to prove their not being married before, and the prohibition of intermarriages between protestants and Roman Catholicks were so many bars to the propagation of the Species, these difficulties are now in a good measure removed; the men are an active, strong, and healthy race, the Women are extremely prolifick and in all human probability the next twenty Years will produce a vast increase of People.

9[th]

Trade.

The French bent their whole attention in this part of the World to the Fur Trade, they never enter'd heartily or with any spirit into the fisheries: most of what was done in this way was by adventurers from the ports of France; some Fish indeed Lumber and provisions were exported to the French islands. Had this trade been opened and agriculture promoted here with any degree of warmth, this branch of Commerce must have become both valuable and extensive, but it was monopolized into the hands of a few, by the connivance and management of the Chiefs, the sole view of these being to enrich themselves by every means. The interest of the State could not fail to be sacrificed upon all occasions.

By the best accounts we can procure, the value of Furs exported in the Year 1754 and 1755 taken from the Duties paid thereon stood thus

		lb. s d
£64,495 : 4 : 7½	 (*b*) in 1754	1,547,885 : 11 : 0
52,735 : 8 : 4	 (*c*) in 1755	1,265,650 : 0 : 0

But the most intelligent Traders here estimate the exportation of this one article to have amounted one Year with another to near £140,000 Sterling p[r] annum

The exportation of these two Years apparently falls very short of this estimation, but it is probable a considerable quantity was run, for the value of imports amounted

£216,769 : 4 : 9¼	 (*d*) in 1754 to	5,202,461 : 15 : 0
75,560 : 8 : 9½	 The Exports of the same Year to	1,813,450 : 11 : 0
£141,208 : 16 : 0	Ballance against the Colony would consequently appear .	3,389,011 : 4 : 0

which carries with it no degree of probability but a strong presumption, that in this as indeed in every other branch the publick was ill served; such of their custom house books as have come into my hands, are so confused and irregular, that even the late M[r] Farrant sent by the Lords of the Treasury to enquire into the commercial state of this Country tho' sensible and skill'd in transactions of the like nature, could collect little information from them.

The French East India Company had the sole privilege of exporting Beaver, for this purpose the Company had an agent at each Government as Director and a Comp-

(*a*) N° 6. p. 61. (*b*) No 7. shewing the species of Fur and Quebec price; (*c*) N° 7 : D° p. 61.
(*d*) N° 8. Imports and Exports of 1754, p. 61.

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troller, a stated price was paid for it (a) four Livres a pound for the green or winter Beaver and one livre ten sols for the Parchement or summer one. The Companies officers gave their receipt for the quantities brought into their Storehouses these became current in the Colony as cash, and in October the Agents drew Bills of Exchange on the Company for the amount of receipts brought into their Office which were ever held in more esteem than those drawn on the Royal Treasury.

The provinces of New York and Philadelphia now share with Canada a great part of the Fur Trade formerly in the hands of the French, but that proportion of it, which the Quebec government enjoy'd must remain here unalterably.

The foregoing is an attempt to sketch the trade of Canada, while subject to French Government, but under the full enjoyment of His Majestys mild and gentle administration, its commerce must flourish to a far greater extent.

1st A Most immense and extensive Cod Fishery can be established in the River and Gulph of St Laurence, and may in time prove an inexhaustible source of wealth and power to Great Britain; Settlements may be formed in the neighbourhood of the best fishing places to which the industrious and intelligent in that branch may be invited and encouraged to repair; a rich tract of country on the South side of the Gulph will in consequence be settled and improved, a Port or Ports established and furnished with every material requisite to repair Ships, that have suffer'd by stress of weather or the difficulties attending navigation in such narrow seas, a point much wanted which will lessen the risks, and considerably increase the profits of the Commerce of this Colony.

It is further to be observed that the Fish caught upon these coasts and in the bays, far exceed the bank Cod and fetch an advanced price in foreign markets; The fishermen being on the spot will commence fishing the very instant the season permits and will continue to the very last of it wherby at least two Months will be gained to the trade, which are just now a heavy expence to it, without producing the least profit to it.

2d Next to the Cod in importance is the Whale fishery which can be carried on to the greatest advantage in the River St Laurence with less risk and expence than in any other seas, where the animals resort; Under this head may be placed the seal and sea-Cow fisheries of which there is a prodigious abundance, and an immense (sic) of oil and Whale-bone may be annually exported to Great Britain.

3d- - There are several small rivers on the Coast of Labrador abounding with vast quantities of salmon; this if followed with spirit and industry, might very soon become a considerable object to the British Trader.

4th. . His Majestys Yards may by the best accounts be supplied with masts from Chamblie, at a much cheaper and easier rate than from New England. By the latter a tedious Land carriage of several miles and the immense falls of a most rapid river over which they must be rafted and where many are lost must greatly enhance the value of this useful and necessary branch of Naval Stores; whereas by the former with little or no risk at a proper season there is an easy water carriage for them all the way to Quebec, the port for shipping them to Europe.

5th— —Tho' as has been before observed, this province must now share the Fur Trade, which she formerly possessed under the French Government, with the neighbouring Colonies, Yet that which was carried on with the different nations inhabiting the northern Coast of Canada, must still remain with her; she may likewise hereafter regain a great part of that with the upper Country, on account of the more easy conveyance.

It is likewise probable that this very branch may be much farther extended, than ever it was under the French, by reason of the superior diligence and application of the British Traders.

It must be allowed the French were laudable in restraining the vent of Spiritous Liquors to the Savages beyond a certain quantity: by this means many broils were

(a) The Company deducted 5 pr Cent on the above price from the Seller

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avoided, for they are fond to excess of everything strong and are all mad in their intoxication.

6th.. Raising hemp and flax for which the lands are in many places extremely proper must be an object of the most serious consideration, And I must repeat here, how useful this must prove to the end of promoting agriculture, of employing the Women and Children during the tedious winter months, and of procuring in a short time a vast exportation of that useful commodity for which the returns will be made in British Manufactures.

7th.. As the Country abounds every where with oak, Ash, Hickory, Walnut, Birch, Beech, Maple and other hard woods, which by experience are known to Yield the most Salts, the article of Pot-ash so much demanded in our Manufactures, may be easily produced and soon become an object of consequence; The essais for this purpose which have been made in our other Colonies and have miscarried, ought not to discourage an attempt in this. The high price of Labor; the Woods being in many parts remote from Water carriage, and the greater encouragement for growing and exporting provisions to the West Indies, have been so many obstacles to the making of Pot-ash in our Colonies, whereas provisions here must be very cheap in a few Years, for the navigation being closed six months out of the twelve this Country can never vie with our Southern Provinces in the West India trade; besides the country being settled close to the River side, the conveyance of the Commodity to the Port where it is to be shipped, will be both cheap and easy it will likewise be a means to employ the men all Winter in the business of Felling and drawing of Wood which time they chiefly dedicate to idleness and smoking

10th

Character of the People

The Canadians may be ranked under four different classes

1st The Gentry or what they call Nobility

2d The Clergy

3d The Merchants or trading part

4th The Peasantry or what is here stilled, Habitant.

1st The Gentry. These are descended from the Military and Civil officers, who have settled in the Country at different times and were usually provided for in the Colony Troops; These consisted formerly of 28 afterwards 30 and had been lately augmented to 40 Companys. They are in general poor except such as have had commands in distant posts where they usually made a fortune in three or four Years. The Croix de St Louis quite completed their happiness. They are extremely vain and have an utter contempt for the trading part of the Colony, tho' they made no scruple to engage in it, pretty deeply too, whenever a convenient opportunity served; They were great Tyrants to their Vassals who seldom met with redress, let their grievances be ever so just.

This class will not relish the British Government from which they can neither expect the same employments or the same douceurs, they enjoyed under the French.

2d The Clergy. Most of the dignified among them are French, the rest Canadians, and are in general of the lower class of People, the former no doubt will have great difficulty to reconcile themselves to us, but must drop off by degrees. Few of the latter are very clever, however the Ecclesiastical state was once composed entirely of natives, they would soon become easy and satisfied, their influence over the people was and is still very great, but tho' we have been so short a time in the Country, a difference is to be perceived, they do not submit so tamely to the Yoke, and under sanction of the capitulation they every day take an opportunity to dispute the tythes with their Curés.

These were moved from their respective parishes at the Bishops pleasure, who thereby always kept them in awe, it may not be perhaps improper to adopt the same Method, in case His Majesty should think right, for the sake of keeping them in proper subjection, to nominate them himself or by those who act under his authority.

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It is not improbable that the Jesuites warned by their late disgraces in the dominions of these Potentates who seemed to favor them the most, and apprehending the like or worse treatment from those they stiled Heretics will chuse to dispose of their Estates and retire, as they may possibly find some difficulties to get purchasers the Government might buy their Lands at an easy rate and dispose of the same to many good purposes.

3^d^ The Traders of this Colony under the French were either dealers in gross or retailers, the former were mostly French and the latter in general natives of this Country all of whom are deeply concerned in the letters of Exchange many are already gone to solicit payment and few of those who have any fund of any consequence in France will remain here.

4^th^. . . . The 4^th^ Order is that of the the Peasantry, these are a strong healthy race, plain in their dress, virtuous in their morals and temperate in their living: They are in general extremely ignorant, for the former government would never suffer a printing press in the Country, few can read or write, and all receive implicitly for truth the many arrant falsehoods and atrocious lies, industriously handed among them by those who were in power.

They took particular pains to persuade them, the English were worse than brutes, and that if they prevailed, the Canadians would be ruled with a rod of Iron, and be exposed to every outrage, this most certainly did not a little contribute, to make them so obstinate in their defence, However ever since the Conquest, I can with the greatest truth assert, that the Troops have lived with the Inhabitants in a harmony unexampled even at home, I must here, in justice to those under my command in this Government, observe to Your Lordship, that in the Winter which immediately followed the reduction of this Province, when from the Calamities of War, and a bad harvest, the inhabitants of these lower parts were exposed to all the horrors of a famine, the Officers of every rank, even in the lowest generously contributed towards alleviating the distresses of the unfortunate Canadians by a large subscription, the British Merchants and Traders readily and cheerfully assisted in this good work, even the poor Soldiers threw in their mite, and gave a days provisions, or a days pay in the month, towards the fund, by this means a quantity of provisions was purchased and distributed with great care and assiduity to numbers of poor Families, who, without this charitable support, must have inevitably perished; such an instance of uncommon generosity towards the conquered did the highest honor to their conquerors and convinced these poor deluded people, how grosly they had been imposed upon; the daily instances of lenity, the impartial justice which has been administer'd, so far beyond what they had formerly experienced, have so alter'd their opinion with regard to us, I may safely venture to affirm for this most useful Order of the state, that far from having the least design to emigrate from their present habitations into any other of the French Colonies, their greatest dread is lest they should meet with the fate of the Accadians and be torn from their native Country. Convinced that this is not to be their case and that the free exercise of their religion will be continued to them once Canada is irrecoverably ceded by a Peace the people will soon become faithful and good subjects to His Majesty, and the Country they inhabit with in a short time prove a rich and most useful Colony to Great Britain.

Before this report is closed it will not be improper to observe to Your Lordship how impossible it is to ascertain exactly what part of North America, the French stiled Canada, no Chart or Map whatever having fallen into our hands or public record of any kind to shew what they understood by it.

However it is to be hoped, the limits on this side at least will need no canvassing nor admit of any dispute

Should I be able to procure farther lights relative either to those limits or the several other matters contained in this Report worthy of notice, You may be assured

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they shall be forthwith transmitted to Your Lordships, happy if my labors can any way conduce to His Majestys Service, or the good of my Country.

I have the Honor to be with great truth and regard
My Lord,—Your Lordships, most obedient
and most faithful humble Servant

JA: MURRAY

Quebec 6th June
1762.

Papers refer'd to in this Report[1]

N° 1 King Arret of the 15th March 1732 directing the letting of the Lands granted already within a certain time limitted on pain of forfeiture.
2 Tariff of Duties on Imports and Exports
3 List of Revenue Officers in Canada the Year 1758 with their Salaries
4 Ordonnance current for 1lb : 10s or about 7½ Sterling.
5 Extract of a Letter to Governor Murray giving some account of the India trade in the Upper Country
6 Number of souls in the Government of Quebec 1761.
7th Quantity of Furs exported in 1754 with the Quebec prices of the several species
8 Imports and Exports in 1754
Seven Plans
Project for Building a Citadel.

COL. BURTON'S REPORT OF THE STATE OF THE GOVERNMENT OF THREE RIVERS.[2]

The Government of Trois Rivieres lyes upon the River St Lawrence, between the two Governments of Quebec, and Montreal,

Length

It Extends about Eighty Miles along the Shore of the River, which in its Course Divides it into two Departments, the North beginning a little above a place Called Les Grondines, which Divides it from the Government of Quebec, & goes up as far as the River Chicot, where it Ends; and the South Department beginning between St Jean, & St Pierre les Bequets, Ending with the upper part of Yamasca Bay.

Breadth

It Runs to the Southward as far as Nova Scotia, Newhampshire, & the Massachusetts, to which Countries Several Rivers of this Government Afford a short passage, especially those of Nic lette, & Biencour, which run up within five or six miles of the source of Kennebeck River, and that of St François, navigable for Canoes to the Portage, which is six miles over, You then Enter a branch of the Connecticut River. To the Northward, this Government stretches thro' an Immense Tract of Country, as far as Hudson's Bay; and the same Nations that trade with the Company settled there, used formerly to bring their Furs into this Government thro' the Rivers of St Maurice & Batiscan.

Notwithstanding the Factory settled at Hudson's Bay, and the Posts at Tadousac, & Chicoutimi up the Saguenay, the easy Navigation of those Rivers especially that of Batiscan, Induces several of the Indians, Called *Têtes de Boulle* to Come down even now to this Government every spring.

[1] The papers here mentioned do not accompany the Report as preserved in the Public Record Office.
[2] See note p. 37.

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STATE OF THE COUNTRY.

All the Lands in this Government, as well as thro' all Canada, are Divided into Seigneuries, & mannors, granted by the Crown of France to different people, upon certain conditions, such as settling them within a limitted time, paying Hommage at Every Change of Seigneur, and part of the purchase in case of Sale, as also Reserving to the Crown the right of cutting timber for building of Ships, or Erecting Fortifications. The Seigneurs are likewise obliged by the said Grants to Report to the Governor Whatever mines may be Discovered in their respective Seigneuries, as all mines found in Canada are the King's Property. In general these Seigneuries run Four or six Miles in front; and six or nine deep from the Banks of the River S^t Lawrence so that many Lands are yet in the hands of the Crown, on the back of those that are Granted.

The Seigneurs had by their Original Grants the power of naming Judges & Administring Justice, even in Capital Cases, thro' their Districts; but Custom has Abolished those too great privileges, tho' the Powers for it are yet extant, in the hands of the Seigneurs: However all suits are now Carried before the proper Tribunals named & established by the Crown.

The Habitations are for the most part settled along the banks of the River S^t Lawrence, or up the Rivers & Rivulets that fall into it, and are seldom Carried up higher than five or six Miles. There are in this Government Eighteen Parishes, viz^t

North Shore	South Shore—
S^t Anne,	S^t Pierre Bequets
S^t Marie,	Gentilly
Riv^re Batiscan	Biencour
Côte Batiscan	Nicolette
Champlain	Bay S^t Antoine
Cape Magdalaine	S^t Francois
Trois Rivieres	Yamasca.
Point du Lac	
Machiche,	
Riv^r du Lup.	
Maskinonge	

These seven last Parishes, viz^t. Du Lac, Machiche Riv^re du Loup, and Maskinongé on the North Shore; Nicolette; Bay S^t Antoine, S^t François, & Yamasca on the South, are settled round Lake S^t Pierre, which is formed by the Spreading of the Water of the River S^t Lawrence, the Bottom muddy, the Water Shallow, one & Twenty miles in Length, and about ten in Breadth; the Channel is not above thirteen feet deep, but the bottom of so soft a mud, that a Vessell drawing Fourteen feet may plough through it, it Abounds with many sorts of Excellent Fish.

The Town of Trois Rivieres which is the Capital lays in the Centre of this Government, as also at an Equal Distance from Quebec, & Montreal; it is built upon the North Shore of the River S^t Lawrence, and Consists of about One Hundred Houses a Parochial church, a Convent of Ursuline Nuns, & Another of Recollet Priests.

STATE OF THE FORTIFICATIONS

There was no other Fortification in this Town, than the Governors House, which is Stockaded round, and Commands by its Situation the Town & Country about it, Untill the siege of Quebec in *1759*. When they Erected Batteries in several Parts of the Town, made an Irregular Intrenchment on that side of it which looks towards the River S^t Lawrence; and threw up Lines flanked with two Redoubts, in the Common that lyes to the Westward towards Montreal.

STATE OF DEFENCE.

This place is at present in no state of Defence, the French having Neglected from their Imaginary Security to pay the least Attention to Fortifying it, & suffered the

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Inhabitants to build their Houses upon the low Ground near the Common, which is liable to be overflowed Every Spring, rather than take advantage of the high Situation upon which part of the Town is built, whereas they might have secured to themselves at a very little Expence, Safe & convenient Magazines for Stores & Provisions, which the equal Distance from Quebec & Montreal, & the proximity to the Iron Mines & Forges that lay behind this Town seem to have pointed out.

PRODUCTS OF THE SOIL.

The Laziness of the people, & the alluring & momentary Advantages they reaped from their Traffick with the Indians in the Upper Countrys, & the Counterband Trade they Carried on with the English Colonies, have hitherto prevented the progress of Husbandry, so that out of very near One Hundred Thousand of Acres of Land, granted by the Seigneurs of the different Parishes, there are not sixteen Thousand under Cultivation, whereof hardly Five Thousand have been Employed for sowing of Wheat, which for many years past have not been sufficient for supplying the Inhabitants of this Government with Bread; and has obliged them to procure Yearly from the Governments of Montreal, or Quebec, several Thousand Bushells of Wheat, in Exchange for Fish, Oats, & Tobacco. The Soil tho' light & sandy in some Parishes produces in general, good Crops of Wheat, Oats, Pease, & all sorts of Vegetables. Tho' the Lands are not near so well Cultivated as they might be, Fruit trees such as Apples, Pears, & Plumbs, have been often planted in this Government, but don't thrive—The Inhabitants attribute it to a Stratum of marle that lyes within a foot, or fourteen inches from the surface, which Occasions the Tree to Decay, as soon as the Root touches it. In the sandy Parts of this Government, musk & water melons are produced in great abundance, good of their kind, and with very little trouble. The difficulty for some years past for procuring Tobacco, from the English Colonies, has encouraged the Inhabitants of this Government to Cultivate it, by which means many of their Corn Fields have been turned to that use, and those Lands greatly Impoverished.

STATE OF THE REVENUE OF THIS GOVERNMENT.

This Government has hitherto brought nothing into the French King's Coffers. There was formerly a Regular Office for buying of Beaver Settled at Trois Rivieres, in the same manner, and with the same priviledges & Restrictions as those of Montreal, and Quebec. But the Advantage which the Inhabitants found in Carrying their Packs to either of the above mentioned Towns, where they could supply themselves with what Goods they wanted, encouraged them to Venture, disobeying the orders given to the Contrary, and of Course rendered the produce of that office, so triffling that after some Years it was joined to that of Quebec.

The only Branch of the Revenue remaining in this Government, is the Kings Dues & Rights, Amounting to a twelfth part of the Price in Case of Sale or Exchange of such Lands, or Houses, as lye upon his Demesnes; as also a fifth Part of the Price of Sale, or Exchange of all Seigneuries & Mannors, as being Lord Paramount of all the Lands & Estates in Canada, of which Dues a third part was always remitted, thro' the King's Pleasure. The produce of which Branch has likewise failed from the want of a Commissary in this Government to Inspect, and look into it.—N.B. There was only One Person called Receiver-General of the King's Demesnes in this Colony, who Resided at Quebec, from the distance, & the want of a Deputy in this Government, the Inhabitants had all the opportunitys they could wish, to sink the King's Dues.

FORMER MANAGEMENT REJECTED ALL BUT ONE ARTICLE.

Indeed no part of the Former Management seems worthy of Adoption, but that of the King's Rights and Privileges, as every other Branch of the Ancient Administration, has been the most powerful means of stopping the progress of this Colony.

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Expences of this Government.

The Expences of this Government cannot be Easily Calculated, as the most material Branch depended upon the probity of the Governors, Intendant, and Keeper of the King's Stores, as also the variable Circumstances of more or less Indians being Employed or visiting this Government; for which purpose there was at Trois Rivieres a Considerable Magazine of Provisions, & Dry Goods of all sorts, Wholly Intended to Supply the wants of Indians living in this Government marching thro' it, or Coming to Trade; the Expence of which Amounted some Years to two or three Hundred Thousands of French Livres, others less. Another branch, but of a Clearer nature was the Sallaries of the People upon the Staff in this Governm' & are as follows.

	French Livres.
To a Governor	6,000 :—
Lieut Governor	2,000 :—
Town Major	1,500 :—
Town Adjutant	1,100 :—
And in the Civil Branch.	
To a Lieut. General or Chief Judge	600 :—
King's Attorney	300 :—
a Taylor	600 :—

Lastly the King was pleased to Grant every Year, to the two Religious Houses of Ursulines & Recollets in the Town of Trois Rivieres, a Gratification not exceeding Twelve Hundred Livres for both Houses; and His Majesty was likewise at the Expence of paying for the Board of such Bastard Children, as were Declared to, and Registered by the King's Attorney, All which Expences were paid Half Yearly by the Treasury at Quebec.

Advantages derived to the French

To all Appearances the French Derived no advantages from this Government, and utterly neglected, or abused such as they might have Improved, or profited by.

The most Material which they Abused was that which might arise from the Iron mines & Forges settled about seven Miles behind the Town of Trois Rivieres, up the River S^t Maurice.

This Establishment Consists of one Furnace and two Forges built upon a little Rivulet, whose water never freeses; it Discharges itself into the River S^t Maurice, from whence the Iron may be easily Conveyed to any Magazine at Trois Rivieres in Batteaux, and from thence in Vessells to Montreal or Quebec. There are besides a large Stone House for the Managers & other wood Buildings for the People Employed at the Works.

The Mine that has hitherto supplied the forges lays very near the surface of the Earth, in a low marshy Ground seven or Eight miles from them, There has hitherto been no Road made to it, as they used to fetch the Ore in Sledges during the Winter Season; but a good One may be easily made.

The Iron made from this Ore, is so Excellent in its Quality, that in a late tryal made by order of His Excellency General Amherst, it was found greatly superior to any made in America, and even Exceeds that Imported from Sweden.

This Mine was opened in the Year 1732, and Granted in 1736 to a Company, whom the King Assisted with a Loan of about *3000* pounds sterling They obliged themselves to Afford what Iron the King might have occasion for, at two Dollars and a half the hundred weight; Whereas this Iron in Barrs never sold for less than five or Six Dollars in this Colony. Their own Extravagance; and the low price of Iron Stipulated for between them and the King, was the reason some Years after of their giving up the Grant, and Declaring themselves unable to Repay the Loan they had borrowed from His Majesty.

In 1742 the King took back the Grant, and kept the Forges in his own hands, which from that time were put entirely under the Direction of the Intendant.

The Works were then Carried on in a Larger scale, the mine produced ore in great plenty; and in the Year *1746* the single Furnace built there returned one Million Eleven

Hundred Thousands five Hundred & Twenty three pounds weight of Cast Iron which produced Five Hundred Thousand Weight of pure Iron, besides a large Quantity of Stoves & Pots. Notwithstanding All This

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N° 1.

A RETURN of the British Forces Quartered in the Government of Trois Rivieres April the 5th 1762.

Place where Quartered	Regiments	Companies	Officers Present					Effective Rank & File
			Commission'd			Non Commission'd		
			Captains	Lieutenants	Ensigns	Serjeants	Drummers	
Trois Rivieres	44th	Captain Hervey		2	1	2	1	73
		Captain Treby	1	2	1	2	2	69
Masquinonge & Machiche	46th	Captain Legge	1	1	1	2	1	60
St Anne & Champlain	46th	Captain Arnot	1	1	1	3	2	59
St François	46th	Captain Johnston		1	1	3	2	59
		Total	3	7	5	12	8	320

44th Regiment—Captain William Hervey Major of Brigade ; one Serjeant recom mended ; one Serjt one Drummer on Party.

46. Regiment—Captain Alexander Johnstone at Quebec, with leave of General Amherst, one Serjeant on Party.

R. BURTON
Colonel—

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N° 2.

RETURN of the Canadian Inhabitants settled in the Town & Government of Trois-Rivieres in April 1762—

Names of Parishes	House Keepers	Married women & widows	Males unmarried & Children	Females unmarried & Children	Male Servants	Female Servants	Men able to Bear Arms	Total of the People.
Les Trois Rivieres	114	130	148	168	59	53	136	672
Point du Lac	46	44	66	73	2	1	53	232
Machiche	106	110	176	164	9	2	153	567
Riviere du Loup	104	97	152	141	22	4	88	500
Masquinongé	65	62	112	94	2	3	62	338.
Yamasca	110	117	161	153	20	12	149	573.
St François	57	52	90	111	16	14	70	340
Baye St Antoine	57	51	94	67	5	5	67	279.
Nicolette	95	84	122	123	12	10	111	446
Bécancour	63	60	65	84	1	6	66	279
Jentilly	27	30	44	44	1	2	35	148.
St Pierre	33	33	70	69	14	0	53	219
Ste Anne	58	44	110	85	17	12	60	326
Ste Marie	58	49	80	85	3	8	64	283
Riviere Batiscant	98	95	153	154	6	7	65	513
Batiscant	35	35	60	79	6	8	54	223.
Champlain	48	49	72	71	30	18	65	288
Cape Magdaleine	32	29	45	35	15	18	40	174
Forges St Maurice	11	11	18	28	3	1	0	72
Total	1217	1182	1838	1948	243	184	1391	6.472

N.B. There are besides in this Government Three Indian Villages, one at Bécancour; Another at St François both of Abenakis; and the last at Pointe du Lac of Algonquins, Containing about *500* Men Women & Children—Besides Forty Five Families of Acadians, amounting to very near Two Hundred people hutted in different places of this Government.—

From the Registers of the Secretary's Office at Trois Rivieres, the 5th of April 1762.

J. BRUYERE. Secry

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3.

RETURN of the Lands granted by the Seigneurs, those under Cultivation, their Natural property, & the Number of Cattle upon them, throughout the Town & Government of Trois Rivieres, in April 1762—

Names of Parishes	Acres of Land Granted	Acres under Cultivation	Property of the same	Horses	Horned Cattle	Sheep.
La Trois Rivieres	5830	1339	All sorts of grains	80	210	50
Pointe du Lac	2780	280	Wheat & Oats	20	50	12
Machiche	9800	1800	Wheat	90	250	70
Riviere du Loup	6200	1200	Wheat & Oats	90	160	20
Maskinongé	4250	550	Wheat Oats & Pease	50	150	25
Yamasca	9300	1300	All sorts	120	380	150
S^t^ François	2600	1100	Wheat & Indian Corn	60	180	40
Baye S^t^ Antoine	6000	1000	Wheat & Pease	50	200	80
Nicolette	9200	1200	All sorts	60	210	80
Bécancour	3400	400	All sorts	40	200	20
Jentilly	5800	200	All sorts	24	60	7
S^t^ Pierre	3900	400	Wheat & Oats	35	120	30
S^te^ Anne	3850	850	Wheat & Oats	64	110	75
S^te^ Marie	4637	1100	Wheat & Oats	66	142	133
Riviere Batiscant	3500	500	Wheat Oats & Tobacco	107	240	25
Batiscant	4033	1482	Wheat Tobacco	46	127	38
Champlain	5660	1400	Wheat Oats & Tobacco	80	175	10
Cap Magdaleine	2100	600	Oats & Tobacco	41	142	19
	92840	16701		1123	3106	884

N.B. There is in this Government great plenty of Hogs, Poultry, Wild Fowl, especially wood Pidgeons: Abundance of Fish in Lake S^t^ Pierre And such an amazing quantity of small fish Crouding up the River S^t^ Maurice about Christmas, that it is sufficient to maintain several poor families, during great part of the Winter—They even feed their Hogs with them.

From the Registers of the Secretary's Office at Trois Rivieres April 5^th^ 1762

J. BRUYERE.
Sec^ry^

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N° 4.

RETURN of the Number of Christenings, Marriages, & Burials in the Government of Trois Rivieres from September 1760, to April 1762

Names of Parishes	Christenings		Marriages	Burials	
	Male	Female		Male	Female
Les Trois Rivieres	38	36	19	27	34
Pointe du Lac	8	10	4	7	5
Machiche	35	30	12	31	13
Riviere du Loup	19	23	18	7	5
Masquinongé	11	13	11	7	3
Yamasca	24	32	26	11	20
S^t^ François	21	20	7	18	17
Bay S^t^ Antoine	13	16	14	7	8
Nicollette	16	19	19	5	7
Bécancour	18	14	21	2	4
S^t^ Pierre	18	8	8	3	5
S^te^ Anne	38	33	19	25	21
Batiscant et Riviere Batiscant	38	32	21	20	12
Champlain et Jentilly	16	18	12	8	14
Cap Magdaleine	8	3	4	4	3
Total	321	307	215	182	171

Thus the Number of Births in this Government have during the above mentioned time, Exceeded that of Burials by 275—

From the Registers of the Secretary's Office at Trois Rivieres—April the 6th 1762—

J. BRUYERE. Sec^ry^

Endorsed:—Colonel Burton
Report
of the State of the Government of Trois
Rivieres in Canada
April. 1762:
in S^r^ J. Amherst's of June 15: 1762.
No 20.

GENERAL GAGE'S REPORT OF THE STATE OF THE GOVERNMENT OF MONTREAL.

MONTREAL March 20th, 1762.

SIR, I have already Acknowledged the Receipt of a Copy of the Earl of Egremont's Letter to you of the 12th Dec^r^, and I take this opportunity to return you my Answers thereto, Assuring you, that I have lost no Time in collecting the best Information of Every thing Contained in that Letter that I could possibly procure.

I feel the highest Satisfaction, that I am able to inform you, That during my Command in this Government, I have made it my Constant Care and Attention, that the Canadians should be treated agreeable to His Majesty's kind & humane Intentions. No Invasion on their Propertys, or Insult on their Persons have gone unpunished, All Reproaches on their Subjection by the Fate of Arms, Revilings on their Customs or Country, and all Reflexions on their Religion have been discountenanced and forbid.

" No Distinction has been made betwixt the Briton & Canadian but equaly regarded as Subjects of the same Prince. The Soldiers live peaceably with the Inhabitants, & they reciprocaly acquire, an affection for each other. I have notwithstanding, made known, His Majesty's Pleasure on these Particulars to the Several Commanders of Corps, that every Individual may be acquainted therewith, which will, no Doubt, Add the greatest Weight to the Orders & Directions which have been already given. And you may be Assured that Troops who have ever shewn the most Ardent desires, to Advance the Interest of their Sovereign, and paid the most exact Obedience to his Commands, will vye with each other in Brotherly Love and Affection to the Canadians, over whom, His Majesty has extended his Royal Favor, & Protection. The Indians have been treated, on the Same principles of Humanity, They have had immediate Justice for all

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their Wrongs, and no Tricks or Artifices have hitherto been attempted, to defraud Them in their Trade.

I send herewith a Return, (N° 1) of the present State of the Troops & Artillery in this Government, As to the Fortifications, except Fort W^{m} Augustus, which may at present be in a good state of Defence, the rest having only been calculated to repel sudden Invasions of Indians, are of Course, of small consideration. The City of Montreal is surrounded by a high Wall ramparted and flanked; the Parapet about Three feet thick a natural Defence from the River S^{t} Lawrence on one side, on the other, a Ditch mostly faced. Upon a Height within the City, is a small square work of wood, compleated since the Capitulation, provided with a few pieces of Artillery, & capable of containing Seventy or Eighty Men. The Fort of Chamblé, is an Antient Stone Castle, flanked with Tours, in which are Port-Holes, for small pieces of Ordnance, no Ditch or Outwork.

You will also receive herewith, a General Return, (N° 2,) of the State of this Government, for the year 1761, Comprehending the Number of its Inhabitants, Cattle &ca. The State of Population, Quantity of Acres Cultivated and Quantity of Grain sown, for the particulars of all which, I referr you to the Return.

The Soil produces all sorts of Summer grain, in some parts of its Government, the Wheat is sown in Autumn. Every kind of pulse & other vegetables ; to which I may add, some Fruits, viz^{t} Apples Pears Plumbs Melons, &ca. Cyder is made here, but as yet in Small quantitys, In general, every Fruit tree, hardy enough to withstand the severity of the Winter, will produce in the summer, which affords sufficient Heat, to bring most kinds of Fruit to Maturity.

The Profits, which the French King drew from the Government of Montreal, unconnected with the other two Governments, of Trois Rivieres & Quebec, proceeded from *the Sale of certain Trading Posts* in the Indian Country, *From the Money paid for permits*, to trade at others, which were called Free Posts, *from the King's own Trade*, at those called the King's Posts. And *from the Droit de Quint, & Droit d'Echange.* In Return (N° 3) you will find these several posts particularly ascertained, with the annual Profits which might have accrued from the two first. It is impossible to ascertain, what were the Profits & Losses upon the French King's own Trade; No Doubt, that Trade well managed, would have produced considerable gains ; but from the Number of Commissaries & Factors employed, who have made very large Fortunes for themselves ; and the immense profusion of Presents, made to the Indians ; I must conclude, His Majesty gained very little from the Commerce.

The Lands have all been granted, on Feudal Tenures, from thence ; The King's *Droit de Quint, & Droit d'Echange.* The first is a Fifth, of all Monies that shall be received, on the sale of Seigneuries. or Lordships. The Latter, a Fifth of the value of all Lordships exchanged, & a Twelfth of the value of all Copyhold. Estates, that shall be exchanged. The Right of Exchange however, did not belong to the French King, either in the City or Island of Montreal ; It having been granted to the priests of the Seminary of S^{t} Sulpice, who are Temporal Lords of that Island. And enjoy the privilege of the Exchange, as well the City as the rest of the Island. The French King generally remitted a Third of his Dues on these sales & Exchanges, whose Revenues from hence, might amount, Communibus Annis, to about Three Thousand Livres. I have Supported His Majesty's Right to these fines of Alienation remitting the Third, according to old Custom. This Year by an Accident, They have amounted to Nine Thousand Livres.

Immediately after we became Masters of this Country, all Monoplys were abolished, and all Incumbrances upon Trade were removed. The Traders chose their posts, without the obligation of purchasing them, and I can by no means think, The French Management, in giving exclusive grants of trade, at particular posts, for the sake of the sale thereof ; or the sale of permits to trade at the free posts, worthy our Imitations. The Indians of course paid dearer for their goods, & the Trade in General, must have been injured by Monoplys. The Traders were alone at the posts they had purchased, where no person in Authority had the Inspection of their Conduct ; & committed many abuses, for which the Indians could get no Redress ; And it has happened, that the Indians had murdered the Traders & plundered their Effects ; by which the French have been drawn into wars at a very great Distance, and at a great Expense. The

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French also found a very great Inconvenience in this kind of Traffick, from the Loss of men to the Colony.

Nothing was more Common, than for the Servants, whom the Merchants hired to work their Boats, & assist in their Trade, thro' a long Habit of Indian Manners & Customs, at length to adopt their way of Life, to intermarry with them, & turn Savages. Several Edicts have been published to prevent this but notwithstanding, there are now some Hundreds amongst the distant Indians, who I do not suppose will ever return to their Country. Tho' the Trading Posts were by this means multiplied, and from thence appears to have increased the Trade, in reality, unless in a few Instances, these Monopolizers brought no Addition of Commerce into Canada, as they for the most part traded with Indians, who would otherwise have carried their Furrs to the great Marts of Michillimakinac and Detroit, so that in Effect, they were only Forestallers of the Market. Besides the Inconveniences which I have mentioned, to have attended the sale of Posts & Permits, I conceive this matter to be so liable to abuse, thro Receivers, Jobbs, & Perquisites, that it would bring but little into His Majesty's Coffers. And that the surest & easiest way to encrease His Majesty's Revenue from the Pelletry will be the laying such Dutys only on its Importation, as shall be thought Advisable.

To remedy the Inconveniencies & abuses, which both the English & French have suffered, thro' the management of the Indian Trade; I know no better method, than to assign a certain Number of Posts in the distant Country, to which only, the Traders should be allowed to traffick, and to abolish all the little Posts.

And I am of opinion the Five Posts hereafter mentioned, will enable His Majesty's subjects to trade with almost every Nation of Indians, that has yet been discovered, and that have been accustomed to Trade with the French, viz[t] *Kanamistigoua* on Lake Huron, *Michillimakinac Baye des Puants* in Lake Michigan *The Detroit, and Houilliatanon*, on the Ouabache.

A small Detachment of Troops with proper Officers should be in each of these Posts, And the officers Authorized, either solely by themselves, or assisted by such other persons as may be found in the posts, to exercise a Judicial power—The Vast distance some of the above Posts are from the Inhabited Country, would alone make this circumstance highly necessary, and the advantages that would arise from it, are very apparent, The Insolence of the Indians will be checked, by the Presence of the Troops. The Tricks & Artifices of the Traders to defraud the Indians will meet with Instant Punishment, which cannot fail to make the Indians conceive, the highest Opinion of Our Integrity & His Majesty's good Inclination towards them, and by these means, all Disputes and Quarrells with the Savages will be prevented. I can devise no better plan for Carrying on the Trade in the distant Countrys, than the above; or by which, any Regulation concerning the Trade that shall be made, can ever be observed, and Supported.

Paper (N° 4) contains the particular Dutys upon the Merchandize imported into Canada, and upon the exports of the Pelletry, Also a Computation of all the Revenues the French King enjoyed, Communibus Annis, from the whole Province of Canada comprehending at an average, Exports & Imports, Sale of Posts, & all Emoluments whatever, which were received in Canada on the King's Account, I referr you likewise to the same paper for the annual expence of Canada to the French, in Time of Peace. You will observe amongst the Exports that the Beaver, which was the exclusive Trade of the India Company, paid no Duty. Nor am I able to send you any good acco[ts], whether the French King drew any Profits from the Beaver, or other Pelletry, on its arrival in the Ports of France; or what advantages The Crown of France reaped from the Exclusive Trade of Beaver, granted to the India Company There are no persons here who can give me any clear Information in those particulars.

The only immediate Importance & advantage the French King derived from Canada was the preventing the Extension of the British Colonys, The Consumption of the Commodities & Manufactures of France, and the Trade of Pelletry. She had no Doubt, views to future Advantages, That this Country might in Time supply her, with Hemp, Cordage, Iron, Masts, & generaly all kinds of Naval Stores.

The people in general seem well enough disposed their new Masters. The only Causes of Dislike which I can discover, proceed from the fear of losing their paper Money, and the Difference of Religion, I understand Canada to be on the same

Footing in Respect of this money, as all the French Colonys; and if France pays any of them, I dont see how she can avoid paying the Bills of Exchange drawn from Canada, in the same proportion as she pays the rest. It is the Canadians only who would be sufferers by an exception, as Canadian Bills, to a very large amount are in the possession of French Merchants, and the rest may be sent to France, & no body be able to distinguish which is French, or which Canadian Property. The people having enjoyed a free & undisturbed Exercise of their Religion, ever since the Capitulation of the Country; Their fears in that particular are much abated, but there still remains a Jealousy. It is to be hoped, that in time this Jealousy will wear off: and certainly in this, much will depend upon the Clergy, Perhaps Methods may be found hereafter, to Supply the Cures of this Country with Priests well affected, But whilst Canada is stocked as she now is, with Corps of Priests detached from Seminarys in France, on whom they depend, and to whom they pay obedience It is natural to conceive, That neither the Priests, or those they can influence, will ever bear that Love and Affection to a British Government, which His Majesty's Auspicious Reign would otherwise engage from the Canadians, as well as from his other Subjects.

No Persons have left this Government to go to France, except Those, who held Military and Civil Employments under the French King. Nor do I apprehend any Emigration at the Peace being perswaded that the present Inhabitants. will remain under the British Dominion. I perceive none preparing to leave the Government, or that seem inclined to do it; unless it is a few Ladys whose Husbands are already in France, and they propose to leave the Country when Peace is made, if their Husbands should not rather choose to return to Canada.

As I cannot discover that the Limits betwixt Louisiana & Canada were distinctly described, so as to be Publickly known, I can only inform you, what were generally believed here, to have been the Boundaries of Canada & give you my own Opinion, which is drawn from the Trade that has been Constantly carried on, by the Canadians, under the Authority, and permission of their several Governors. From hence I judge, not only the Lakes, which are Indisputable, but the whole Course of the Mississippi from its Heads to it's Junction with the Illinois, to have been comprehended by the French, in the Government of Canada,

The People of Louisiana carry their Trade up the Missouri River, and I can't find that the Traders from that Province, ever went higher up the Mississipi, than the mouth of the Illinois River, on the Contrary, the Traders from Canada, did constantly trade above the Illinois, from their Posts on Lake Michigan, even up to the River S[t] Croix, and the Falls of S[t] Anthony, And it was the Trade alone of the Mississipi Indians, which made the Post of the Baye des Puants, so very advantageous. The Illinois River, tho' formerly in the District of Canada, was, after some Disputes betwixt the Governor, annexed to Louisiana. A South Easterly Line, drawn from the portage, betwixt the Illinois River and the waters which run into Lake Michigan will bring you to the post of Houilliatanon upon the Ouabaches fourscore Leagues down that River; Computing from that part, where the Boats are Launched, after crossing the Portage of the Miamis. This was the last Trading Post belonging to Canada on that side, & was certainly the Boundary of Canada on that side. About sixty Leagues below this Post, is the Post of Vincennes, which was served by the Traders of Louisiana, and of Course, was the Boundary of that Province. This is the best information I can procure you concerning the Limits, and what I have described to you, are thought to be the real Boundaries betwixt the two Provinces.

As I have answered the several Particulars of Lord Egremont's Letter, after having made the best Enquiry I shall think myself happy if the Acco[t] I send you, shall in any Shape contribute to Your transmitting to His Majesty the exact State of his Province of Canada. I am with great Regard & Esteem.

Sir, your most obedient most humble servant,

THO[s]. GAGE.

His Excellency
S[r] Jeffery Amherst.

Endorsed: Major General Gage
20[th] March 1762
in S[r]. J. Amherst's of May 12[th] 1762.
No 38.

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TREATY OF PARIS 1763.[1]

F. O. State Papers.
Treaties

February 10th 1763.—

DEFINITIVE Treaty of Peace and Alliance between Great Britain France and Spain, concluded at Paris, with the Seperate Articles thereunto belonging.

Au Nom de la Très Sainte & Indivisible Trinité, Pere, Fils, & Saint Esprit. Ainsi soit il.

Soit notoire à Tous Ceux, qu'il appartiendra ou peut appartenir, en Maniere quelconque.

Il a plû au Tout Puissant de repandre l'Esprit d'Union & de Concorde sur les Princes, dont les Divisions avoient porté le Trouble dans les quatre Parties du Monde, & de leur inspirer le Dessein de faire succeder les Douceurs de la Paix aux Malheurs d'une longue et sanglante Guerre, qui, après s'être elevée entre L'Angleterre & La France, pendant le Regne du Serenissime & Tres Puissant Prince Georges 2. par la Grace de Dieu Roy de la Grande Bretagne, de glorieuse Memoire, a été continueé sous le Régne du Serenissime & Très Puissant Prince Georges 3. Son Successeur, & s'est communiquée dans ses Progrés à l'Espagne & au Portugal ; En Consequence, Le Serenissime & Très-Puissant Prince Georges 3., par la Grace de Dieu Roy de la Grande Bretagne, de France, et d'Irlande, Duc de Brunswick & de Lunebourg, Archi-Tresorier & Electeur du Saint Empire Romain ; Le Serenissime & Très Puissant Prince, Louis 15. par la Grace de Dieu Roy Très Chretien—Et Le Serenissime & Très Puissant Prince Charles 3. par la Grace de Dieu Roy d'Espagne, & des Indes, après avoir posé les Fondemens de la Paix dans les Preliminaires signés le 3 : Novbre dernier à Fontainebleau ; Et le Serme & Très puissant Prince Dom Joseph 1er par la Grace de Dieu Roy de Portugal & des Algarves, après y avoir accedé ; Ont resolû de consommer sans Delai ce grand & important Ouvrage ; A cet Effet les hautes Parties Contractantes ont nommé & constitué Leurs Ambassadeurs Extraordinaires & Ministres Plenipotentiaires respectifs ; Savoir, Sa Sacrée Majesté Le Roy de la Grande Bretagne, Le Très illustre & très excellent Seigneur, Jean, Duc & Comte de Bedford, Marquis de Tavistock &c., Son Ministre d'Etat, Lieutenant General de Ses Armées, Garde de son Sceau Privé, Chevalier du Très Noble Ordre de la Jarretiere, & Son Ambassadeur Extraordinaire & Ministre Plenipotentiaire près de Sa Majesté Très Chretienne ; Sa Sacrée Majesté Le Roy Très Chretien, le très illustre & très excellent Seigneur, Cesar Gabriel de Choiseul, Duc de Praslin, Pair de France, Chevalier de ses Ordres, Lieutenant General de ses Armées, & de la Province de Bretagne, Conseiller en tous ses Conseils, et Ministre & Secretaire d'Etat, & de ses Commandemens & Finances ; Sa Sacrée Majesté Le Roy Catholique le très illustre & tres excellent Seigneur Dom Gerom Grimaldi, Marquis de Grimaldi, Chevalier des Ordres du Roy Très Chretien, Gentilhomme de la Chambre de Sa Majesté Catholique avec Exercice, & Son Ambassadeur Extraordinaire près de Sa Majesté Très Chretienne ; Sa Sacrée Majesté Le Roy Très Fidele, le très illustre & très excellent Seigneur, Martin de Mello & Castro, Chevalier profés de l'Ordre de Christ, du Conseil de Sa Majesté Très Fidele, & Son Ambassadeur & Ministre Pleni potentiaire auprès de S. Mté Très Chretne ; Lesquels, après s'être duëment communiqué leurs Plein pouvoirs en bonne Forme (& dont les Copies sont transcrites à la Fin du present Traité de Paix) sont convenus des Articles, dont **** la Teneur s'ensuit.

ARTICLE 1.

Il y aura une Paix Chretienne, universelle, & perpetuelle tant par Mer que par Terre, & une Amitié sincere & constante sera retablie entre Leurs Majestés Britannique, Très Chretienne, Catholique, & Très Fidele, & entre leurs Heritiers, & Successeurs, Royaumes, Etats, Provinces, Pays, Sujets, & Vassaux, de quelque Qualité et Condition qu'Ils soient,

[1] The French text of the treaty as here given is taken from a series of photographs reproducing the original treaty as preserved in the Public Record Office, among the State Papers of the British Foreign Office, in the section "Treaties," vol. 123.

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sans Exception de Lieux, ni de Personnes, en sorte que les Hautes Parties Contractantes apporteront la plus grande Attention à maintenir entr'Elles & leurs dits Etats & Sujets cette Amitié & Correspondance reciproque, sans permettre dorenavant, que de Part ni d'autre on commette aucunes Sortes d'Hostilités par Mer ou par Terre, pour quelque Cause ou sous quelque Pretexte que ce puisse être ; Et on evitera soigneusement tout ce qui pourroit alterer à l'avenir l'Union heureusement retablie, s'attachant au contraire à se procurer reciproquement en toute Occasion tout ce qui pourroit contribuer à leur Gloire, Interêts, & Avantages mutuels, sans donner aucun Secours ou Protection directement ou indirectement à ceux, qui voudroient porter quelque Prejudice à l'une ou à l'autre des dites hautes Parties contractantes. Il y aura un Oubli general de tout ce qui a pû être fait ou commis avant ou depuis le Commencement de la Guerre, qui vient de finir.

ARTICLE 2.

Les Traités de Westphalie de mil six cent quarante huit, ceux de Madrid entre les Couronnes de la Grande Bretagne & d'Espagne de mil six cent soixante sept, & de mil six cent soixante dix, les Traités de Paix de Nimegue, de mil six cent soixante dix huit, & de mil six cent soixante dix neuf, de Ryswick de mil six cent quatre vingt dix sept, ceux de Paix & de Commerce d'Utrecht de mil sept cent treize, celui de Bade de mil sept cent quatorze, le Traité de la triple Alliance de La Haye de mil sept cent dix sept, celui de la quadruple Alliance de Londres de mil sept cent dix huit, le Traité de Paix de Vienne de mil sept cent trente huit, le Traité Definitif d'Aix la Chapelle de mil sept cent quarante huit, & celui de Madrid entre les Couronnes de la Grande Bretagne, & d'Espagne de mil sept cent cinquante, aussi bien que les Traités entre les Couronnes d'Espagne & de Portugal du 13. Fevrier mil six cent soixante huit, du 6. Fevrier mil sept cent quinze, & du 12. Fevrier mil sept cent soixante un, & celui du 11. Avril mil sept cent treize entre la France & de Portugal, avec les Guaranties de la Grande Bretagne ; servent de Base & de Fondement à la Paix, & au present Traité ; & pour cet Effet ils sont tous renouvellés & confirmés dans la meilleure Forme, ainsi que tous les Traités en general, qui subsistoient entre les hautes Parties contractantes avant la Guerre, & comme s'ils étoient inserés ici Môt à Môt, en sorte qu'ils devront être observés exactement à l'avenir dans toute leur Teneur, & religieusement executés de Part & d'autre dans tous leurs Points, auxquels il n'est pas derogé par le present Traité, nonobstant tout ce qui pourroit avoir été stipulé au contraire par aucune des Hautes Parties contractantes ; Et toutes les dites Parties declarent, qu'Elles ne permettront pas qu'il subsiste aucun Privilege, Grace, ou Indulgence contraires aux Traités ci-dessus confirmés, à l'Exception de ce qui aura eté accordé et stipulé par le present Traité.

ARTICLE 3.

Tous les Prisonniers faits de Part & d'autre tant par Terre que par Mer, et les Otages enlêvés ou donnés, pendant la Guerre, et jusqu'à ce Jour, seront restitués sans Rançon dans six Semaines au plus tard, à compter du Jour de l'Echange de la Ratification du present Traité, chaque Couronne soldant respectivement les Avances, qui auront eté faites pour la Subsistance & l'Entretien de ces Prisonniers par le Souverain du Pays, où Ils auront été detenûs, conformément aux Reçus & Etats constatés & autres Titres autentiques, qui seront fournis de Part & d'autre. Et il sera donné reciproquement des Suretés pour le Payement des Dettes, que les Prisonniers auroient pû contracter dans les Etats, où Ils auroient été detenûs, jusqu'à leur entiere Liberté.—Et tous les Vaisseaux, tant de Guerre que marchands, qui auroient eté pris depuis l'Expiration des Termes convenûs pour la Cessation des Hostilités par Mer, seront pareillement rendûs de bonne Foy, avec tous leurs Equipages, & Cargaisons ; Et on procedera à l'Execution de cet Article immediatement après l'Echange des Ratifications de ce Traité.

ARTICLE 4.

Sa Majesté Très Chretienne renonce à toutes les Pretensions, qu'Elle a formées autrefois, ou pû former, à la Nouvelle Ecosse, ou l'Acadie, en toutes ses Parties, & la

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garantit toute entiere, & avec toutes ses Dependances, au Roy de la Grande Bretagne. De plus, Sa Majesté Très Chretienne cede & garantit à Sa dite Majesté Britannique, en toute Proprieté, le Canada avec toutes ses Dependances, ainsi que l'Isle du Cap Breton, & toutes les autres Isles, & Côtes, dans le Golphe & Fleuve S^t Laurent, & generalement tout ce qui depend des dits Pays, Terres, Isles, & Côtes, avec la Souveraineté, Proprieté, Possession, & tous Droits acquis par Traité, ou autrement, que le Roy Très Chretien et la Couronne de France ont eus jusqu'à present sur les dits Pays, Isles, Terres, Lieux, Côtes, & leurs Habitans, ainsi que le Roy Très Chretien cede & transporte le tout au dit Roy & à la Couronne de la Grande Bretagne, & cela de la Maniere & d^e la Forme la plus ample, sans Restriction, & sans qu'il soit libre de revenir sous aucun Pretexte contre cettte Cession & Garantie, ni de troubler la Grande Bretagne dans les Possessions sus-mentionnées. De son Coté Sa Majesté Britannique convient d'accorder aux Habitans du Canada la Liberté de la Religion Catholique ; En Consequence Elle donnera les Ordres les plus precis & les plus effectifs, pour que ses nouveaux Sujets Catholiques Romains puissent professer le Culte de leur Religion selon le Rit de l'Eglise Romaine, en tant que le permettent les Loix de la Grande Bretagne.—Sa Majesté Britannique convient en outre, que les Habitans François ou autres, qui auroient eté Sujets du Roy Très Chretien en Canada, pourront se retirer en toute Sûreté & Liberté, où bon leur semblera, et pourront vendre leurs Biens, pourvû que ce soit à des Sujets de Sa Majesté Britannique, & transporter leurs Effets, ainsi que leurs Personnes, sans être genés dans leur Emigration, sous quelque Pretexte que ce puisse être, hors celui de Dettes ou de Procés criminels; Le Terme limité pour cette Emigration sera fixé à l'Espace de dix huit Mois, à compter du Jour de l'Echange des Ratifications du present Traité.

Article 5.

Les Sujets de la France auront la Liberté de la Pêche, & de la Secherie, sur une Partie des Côtes de l'Isle de Terre-Neuve, telle qu'elle est specifiée par l'Article 13. du Traité d'Utrecht, lequel Article est renouvellé & confirmé par le present Traité, (à l'Exception de ce qui regarde l'Isle du Cap Breton, ainsi que les autres Isles & Côtes dans L'Embouchure et dans le Golphe S^t Laurent ;) Et Sa Majesté Britannique consent de laisser aux Sujets du Roy Très Chretien la Liberté de pêcher dans le Golphe S^t Laurent, à Condition que les Sujets de la France n'exercent la dite Pêche, qu'à la Distance de trois Lieües de toutes les Côtes appartenantes à la Grande Bretagne, soit celles du Continent, soit celles des Isles situées dans le dit Golphe S^t Laurent. Et pour ce qui concerne la Pêche sur les Côtes de l'Isle du Cap Breton hors du dit Golphe, il ne sera pas permis aux Sujets du Roy Très Chretien d'exercer la dite Pêche, qu'à la Distance de quinze Lieües des Côtes de l'Isle du Cap Breton ; Et la Pêche sur les Côtes de la Nouvelle Ecosse, ou Acadie, et par tout ailleurs, hors du dit Golphe, restera sur le Pied des Traités anterieurs.

Article 6.

Le Roy de la Grande Bretagne cede les Isles de S^t Pierre & de Miquelon, en toute Proprieté, à Sa Majesté Très Chretienne, pour servir d'Abri aux Pêcheurs François ; Et Sa dite Majesté Très Chretienne s'oblige à ne point fortifier les dites Isles, à n'y établir que des Batimens civils pour la Commodité de la Pêche, & à n'y entretenir qu'une Garde de cinquante Hommes pour la Police.

Article 7.

Afin de retablir la Paix sur des Fondemens solides & durables, & écarter pour jamais tout Sujet de Dispute par Rapport aux Limites des Territoires Britanniques et François sur le Continent de l'Amerique, il est convenû, qu'a l'avenir les Confins entre les Etats de Sa Majesté Britannique & ceux de Sa Majesté Très Chretienne en cette Partie du Monde, seront irrevocablement fixés par une Ligne tirée au milieu du Fleuve Mississippi depuis sa Naissance jusqu'à la riviere d'Iberville, & de là par une Ligne tirée au milieu de cette Riviere & des Lacs Maurepas & Pontchartrain jusqu'à la Mer ; Et à cette Fin

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le Roy Très Chretien cede, en toute Proprieté, & garantit à Sa Majesté Britannique la Riviere & le Port de la Mobile, & tout ce qu'Il possede, ou a dû posseder, du Coté gauche du Fleuve Mississippi, à l'Exception de la Ville de la Nouvelle Orleans, & de l'Isle dans laquelle Elle est située, qui demeureront à la France; Bien entendû, que la Navigation du Fleuve Mississippi sera également libre tant aux Sujets de la Grande Bretagne comme à ceux de la France, dans toute sa Largeur, & toute son Etendüe, depuis sa Source jusqu'à la Mer, et nommement cette Partie, qui est entre la susdite Isle de la Nouvelle Orleans & la Rive droite de ce Fleuve, aussi bien que l'Entrée & la Sortie par son Embouchure. Il est de plus stipulé, que les Batimens appartenants aux Sujets de l'une ou de l'autre Nation ne pourront être arrêtés, visités, ni assujettis au Payement d'aucun Droit quelconque.—Les Stipulations inserées dans l'Article 4. en Faveur des Habitans du Canada auront Lieu de même pour les Habitans des Pays cedés par cet Article.

ARTICLE 8.

Le Roy de la Grande Bretagne restituera à la France les Isles de la Guadeloupe, de Mariegalante, de la Desirade, de la Martinique, & de Belle-isle; Et les Places de ces Isles seront rendües dans le même Etat, où Elles etoient, quand la Conquête en a été faite par les Armes Britanniques; Bien entendû, que les Sujets de Sa Majesté Britannique, qui se seroient établis, ou ceux qui auroient quelques Affaires de Commerce à regler dans les dites Isles & autres Endroits restitués à la France par le present Traité, auront la Liberté de vendre leurs Terres, & leurs Biens, de regler leurs Affaires, de recouvrer leurs Dettes, & de transporter leurs Effets, ainsi que leurs Personnes, à bord des Vaisseaux qu'il leur sera permis de faire venir aux dites Isles, & autres Endroits, restitués comme dessus, & qui ne serviront qu'à cet Usage seulement, sans être genés à Cause de leur Religion, ou sous quelqu'autre Pretexte que ce puisse être hors celui de Dettes ou de Procès criminels.—Et pour cet Effet le Terme de dix-huit Mois est accordé aux Sujets de Sa Majesté Britannique à compter du Jour de l'Echange des Ratifications du present Traité.—Mais comme la Liberté, accordée aux Sujets de Sa Majesté Britannique, de transporter leurs Personnes & leurs Effets sur des Vaisseaux de leur Nation pourroit être sujette à des Abus, si l'on ne prenoit la Precaution de les prevenir, il a été convenû expressement, entre Sa Majesté Britannique & Sa Majesté Très Chretienne, que le Nombre des Vaisseaux Anglois, qui auront la Liberté d'aller aux dites Isles & Lieux restitués à la France sera limité, ainsi que le Nombre de Tonneaux de chacun, qu'ils iront en lest, partiront dans un Terme fixé, & ne feront qu'un seul Voyage; Tous les Effets, appartenants aux Anglois, devant être embarqués en même Tems. Il a ete convenû en outre, que Sa Majesté Très Chretienne fera donner les Passeports necessaires pour les dits Vaisseaux; que, pour—plus grande Sureté, il sera libre de mettre deux Commis ou Gardes Francois sur chacun des dits Vaisseaux, qui seront visités dans les Atterages & Ports des dites Isles, & Lieux, restitués à la France; Et que les Marchandises, qui s'y pourront trouver, seront confisquées.

ARTICLE 9.

Le Roy Très Chretien cede & garantit à Sa Majesté Britannique, en toute Proprieté, les Isles de la Grenade & des Grenadines, avec les mêmes Stipulations en Faveur des Habitans de cette Colonie, inserées dans l'Article 4. pour ceux du Canada; Et le Partage des Isles, appellées neutres, est convenû et fixé de maniere que celles de S^t Vincent la Dominique, & Tabago, resteront, en toute Proprieté, à la Grande Bretagne, & que celle de S^te Lucie sera remise à la France pour en jouir, pareillement en toute Proprieté.—Et les hautes Parties contractantes garantissent le Partage ainsi stipulé.

ARTICLE 10.

Sa Majesté Britannique restituera à la France l'Isle de Gorée, dans l'Etat, où Elle s'est trouvée, quand Elle a ete conquise; Et Sa Majesté Très Chretienne cede, en toute Proprieté, et garantit au Roy de la Grande Bretagne la Riviere de Senegal, avec les Forts & Comptoirs de S^t Louis, de Podor, & de Galam, & avec tous les Droits & Dependances de la dite Riviere de Senegal.

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ARTICLE 11.

Dans les Indes Orientales La Grande Bretagne restituera à la France, dans l'Etat où ils sont aujourd'hui, les differens Comptoirs, que cette Couronne possedoit tant sur la Côte de Choromandel & d'Orixa, que sur celle de Malabar, ainsi que dans le Bengale, au Commencement de l'Année mil sept cent quarante neuf; Et Sa Majesté Très Chretienne renonce à toute Pretension aux Acquisitions, qu'Elle avoit faites sur la Côte de Choromandel, & d'Orixa, depuis le dit Commencement de l'Année mil sept cent quarante neuf.—Sa Maj^{te} Très Chretienne restituera, de son Coté, tout ce qu'Elle pourroit avoir conquis sur la Grande Bretagne dans les Indes Orientales pendant la presente Guerre, & fera restituer nommement Natal & Tapanouly dans l'Isle de Sumatra. Elle s'engage de plus à ne point eriger de Fortifications, & à ne point entretenir de Troupes dans aucune Partie des Etats du Subah de Bengale.—Et afin de conserver la Paix future sur la Côte de Choromandel & d'Orixa, les Anglois & les François reconnoitront Mahomet Ali Khan pour legitime Nabob du Carnate, & Salabat Jing pour legitime Subah de Decan; Et les deux Parties renonceront à toute Demande ou Pretension de Satisfaction qu'Elles pourroient former à la Charge, l'une de l'autre, ou à celle de leurs Alliés Indiens pour les Depredations ou Degats commis soit d'un Coté, soit de l'autre pendant la Guerre.

ARTICLE 12.

L'Isle de Minorque sera restituée à Sa Majesté Britannique, ainsi que le Fort S^{t} Philippe, dans le même Etat où ils se sont trouvés, lorsque la Conquête en a eté faite par les Armes du Roy Très Chretien, & avec l'Artillerie, qui y etoit lors de la Prise de la dite Isle & du dit Fort.

ARTICLE 13.

La Ville & le Port de Dunkerque seront mis dans l'Etat fixé par le dernier Traité d'Aix la Chapelle, & par les Traités anterieurs;—La Cunette sera détruite immediatement après l'Echange des Ratifications du present Traité, ainsi que les Forts & Batteries, qui defendent l'Entrée du Coté de la Mer; Et il sera pourvû en même Tems à la Salubrité de l'Air & à la Santé des Habitans par quelqu'autre Moyen à la Satisfaction du Roy de la Grande Bretagne.

ARTICLE 14.

La France restituera tous les Pays, appartenants à l'Electorat d'Hanovre, au Landgrave de Hesse, au Duc de Brunswick, & au Comte de la Lippe Buckebourg, qui se trouvent, ou se trouveront, occupés par les Armes de Sa Majesté Très Chretienne; Les Places de ces differens Pays seront renduës dans le même Etat où Elles étoient, quand la Conquête en a eté faite par les Armes Francoises; Et les Pieces d'Artillerie, qui auront eté transportées ailleurs, seront remplacées par le même Nombre de même Calibre, Poids, & Metal.

ARTICLE 15.

En Cas que les Stipulations, contenües dans l'Article 13. des Preliminaires ne fussent pas accomplies lors de la Signature du present Traité, tant par Rapport aux Evacuations à faire par les Armées de la France des Places de Cleves, de Wesel, de Gueldres, & de tous les Pays, appartenants au Roy de Prusse, que par Rapport aux Evacuations à faire par les Armées Britannique & Francoise des Pays, qu'Elles occupent en Westphalie, Basse-Saxe, sur le Bas-Rhin, le Haut Rhin, & dans tout l'Empire; & à la Retraite des Troupes dans les Etats de Leurs Souverains respectifs, Leurs Majestés Britannique & Très Chretienne promettent de proceder de bonne Foy, avec toute la Promptitude que le Cas pourra permettre, aux dites Evacuations, dont Ils stipulent l'Accomplissement parfait avant le quinze de Mars prochain, ou plutôt, si faire se peut.— Et Leurs Majestés Britannique & Très Chretienne s'engagent de plus, & se promettent, de ne fournir aucun Secours, dans aucun Genre, à Leurs Alliés respectifs, qui resteront engagés dans la Guerre d'Allemagne.

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ARTICLE 16.

La Decision des Prises, faites en Tems de Paix par les Sujets de la Grande Bretagne sur les Espagnols, sera remise aux Cours de Justice de l'Amirauté de la Grande Bretagne, conformement aux Regles établies parmi toutes les Nations, de sorte que la Validité des dites Prises entre les Nations Britannique & Espagnole sera decidée & jugée, selon le Droit des Gens, & selon les Traités, dans les Cours de Justice de la Nation, qui aura fait la Capture.

ARTICLE 17.

Sa Majesté Britannique fera demolir toutes les Fortifications, que ses Sujets pourront avoir erigées dans la Baye de Honduras, & autres Lieux du Territoire de l'Espagne dans cette Partie du Monde, quatre Mois après la Ratification du present Traité ; Et Sa Majesté Catholique ne permettra point, que les Sujets de Sa Majesté Britannique, ou leurs Ouvriers, soient inquietés ou molestés sous aucun Pretexte que ce soit, dans les dits Lieux, dans leur Occupation de couper, charger, & transporter, le Bois de Teinture ou de Campêche ; Et pour cet Effet Ils pourront bâtir, sans Empêchement, & occuper sans Interruption, les Maisons & les Magazins, qui sont necessaires pour Eux, pour leurs Familles, & pour leurs Effets ; Et Sa Majesté Catholique leur assure par cet Article l'entiere Jouïssance de ces Avantages, & Facultés sur les Côtes & Territoires Espagnols, comme il est stipulé ci-dessus, immediatement après la Ratification du present Traité.

ARTICLE 18.

Sa Majesté Catholique se desiste, tant pour Elle que pour ses Successeurs, de toute Pretension, qu'Elle peut avoir formée en Faveur des Guipuscoans & autres de ses Sujets au Droit de pêcher aux Environs de l'Isle de Terre-Neuve.

ARTICLE 19.

Le Roy de la Grande Bretagne restituera à l'Espagne tout le Territoire qu'Il a conquis dans l'Isle de Cuba, avec la Place de la Havane ; Et cette Place, aussi bien que toutes les autres Places de la dite Isle, seront rendües dans le même Etat, où Elles etoient, quand Elles ont été conquises par les Armes de Sa Majesté Britannique : Bien entendû, que les Sujets de Sa Majesté Britannique, qui se seroient établis, ou ceux qui auroient quelques Affaires de Commerce à regler, dans la dite Isle, restituée à l'Espagne par le present Traité, auront la Liberté de vendre leurs Terres, & leurs Biens, de regler leurs Affaires, de recouvrer leurs Dettes, et de transporter leurs Effets ainsi que leurs Personnes à bord des Vaisseaux, qu'il leur sera permis de faire venir à la dite Isle, restituée comme dessus, & qui ne serviront qu'à cet Usage seulement, sans être genés à Cause de leur Religion, ou sous quelqu'autre Pretexte que ce puisse être, hors celui de Dettes ou de Procès criminels ; Et pour cet Effet le Terme de dix huit Mois est accordé aux Sujets de Sa Majesté Britannique, à compter du Jour de l'Echange des Ratifications du present Traité.—Mais comme la Liberté, accordée aux Sujets de Sa Majesté Britannique de transporter leurs Personnes & leurs Effets sur des Vaisseaux de leur Nation, pourroit être sujette à des Abus, si l'on ne prenoit la Precaution de les prevenir, il a été convenû expressement entre Sa Majesté Britannique & Sa Majesté Catholique, que le Nombre des Vaisseaux Anglois, qui auront la Liberte d'aller à la dite Isle restituée à l'Espagne, sera limité, ainsi que le Nombre de Tonneaux de chacun, qu'ils iront en lest, partiront dans un Terme fixé, & ne feront qu'un seul Voyage ; Tous les Effets, appartenants aux Anglois, devant être embarqués en même Tems.—Il a été convenû en outre, que Sa Majesté Catholique fera donner les Passeports necessaires pour les dits Vaisseaux ; que, pour plus grande Sureté, il sera libre de mettre deux Commis ou Gardes Espagnols sur chacun des dits Vaisseaux, qui seront visités dans les Atterages et Ports de la dite Isle restituée à l'Espagne, et que les Marchandises, qui s'y pourront trouver, seront confisquées.

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ARTICLE 20.

En Consequence de la Restitution stipulée dans l'article precedent, Sa Majesté Catholique cede et garantit, en toute Proprieté, à Sa Majesté Britannique, la Floride, avec le Fort de S[t] Augustin, & la Baye de Pensacola, ainsi que tout ce que l'Espagne possede sur le Continent de l'Amerique septentrionale, à l'Est, ou au Sud Est, du fleuve Mississippi, & generalement tout ce qui depend des dits Pays & Terres, avec la Souveraineté, Proprieté, Possession, & tous Droits acquis par Traité ou autrement, que Le Roy Catholique & la Couronne d'Espagne, ont eus jusqu'à present sur les dits Pays, Terres, Lieux, & leurs Habitans; Ainsi que Le Roy Catholique cede & transporte le tout au dit Roy & à la Couronne de la Grande Bretagne, & cela de la Maniere & de la Forme la plus ample; Sa Majesté Britannique convient de son Coté d'accorder aux Habitans des Pays ci-dessus cedés la Liberté de la Religion Catholique; En Consequence Elle donnera les Ordres les plus exprès & les plus effectifs, pour que ses nouveaux Sujets Catholiques Romains puissent professer le Culte de leur Religion selon le Rit de l'Eglise Romaine, en tant que le permettent les Loix de la Grande Bretagne: Sa Majesté Britannique convient en outre, que les Habitans Espagnols, ou autres qui auroient eté Sujets du Roy Catholique, dans les dits Pays, pourront se retirer en toute Sureté et Liberté, où bon leur semblera, et pourront vendre leurs Biens, pourvû que ce soit à des Sujets de Sa Majesté Britannique, & transporter leurs Effets, ainsi que leurs Personnes, sans être genés dans leur Emigration, sous quelque Pretexte que ce puisse être, hors celui de Dettes ou de Procès criminels; Le Terme, limité pour cette Emigration, étant fixé à l'Espace de dix-huit Mois, à compter du Jour de l'Echange des Ratifications du present Traité.—Il est de plus stipulé, que Sa Majesté Catholique aura la Faculté de faire transporter tous les Effets, qui peuvent Lui appartenir, soit Artillerie, ou autres.

ARTICLE 21.

Les Troupes Francoises & Espagnoles evacueront tous les Territoires, Campagnes, Villes, Places, & Chateaux, de Sa Majesté Très Fidele, en Europe, sans Reserve aucune, qui pourront avoir eté conquis par les Armées de France & d'Espagne, & les rendront dans le même Etat où Ils étoient, quand la Conquête en a eté faite, avec la même Artillerie, & les Munitions de Guerre, qu'on y a trouvées; Et à l'Egard des Colonies Portugaises, en Amerique, Afrique, ou dans les Indes Orientales, s'il y étoit arrivé quelque Changement, toutes Choses seront remises sur le même Pied, où Elles étoient, et en Conformité des Traités precedens, qui subsistoient entre les Cours de France, d'Espagne, & de Portugal, avant la presente Guerre.

ARTICLE 22.

Tous les Papiers, Lettres, Documens & Archives, qui se sont trouvés dans les Pays, Terres, Villes, & Places, qui sont restitués, & ceux appartenants aux Pays cedés, seront delivrés, ou fournis, respectivement, & de bonne Foi, dans le même Tems, s'il est possible, de la Prise de Possession, ou au plus tard, quatre Mois après l'Echange des Ratifications du present Traité, en quelque Lieu que les dits Papiers ou Documens puissent se trouver.

ARTICLE 23.

Tous les Pays, & Territoires, qui pourroient avoir eté conquis, dans quelque Partie du Monde que ce soit, par les Armes de Leurs Majestés Britannique & Très Fidele, ainsi que par celles de Leurs Majestés Très Chretienne & Catholique, qui ne sont pas compris dans le present Traité, ni à Titre de Cessions, ni a Titre de Restitutions, seront rendûs sans Difficulté, & sans exiger de Compensation.

ARTICLE 24.

Comme il est necessaire de designer une Epôque fixe pour les Restitutions & les Evacuations à faire, par chacune des Hautes Parties Contractantes, il est convenû que les Troupes Britanniques & Françoises completteront, avant le quinze de Mars prochain,

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tout ce qui restera à executer des Articles 12. & 13. des Preliminaires, signés le 3. Jour de Novembre passé, par Rapport à l'Evacuation à faire dans l'Empire, ou ailleurs.—L'Isle de Belle-isle sera évacuée six semaines après l'Echange des Ratifications du present Traité, ou plutôt si faire se peut.—La Guadeloupe, la Desirade, Marie-galante, la Martinique, & Ste Lucie, trois Mois après l'Echange des Ratifications du present Traité, ou plutôt, si faire se peut.—La Grande Bretagne entrera pareillement au Bout de trois Mois après l'Echange des Ratifications du preient Traité, ou plutôt si faire se peut, en Possession de la Riviere & du Port de la Mobile, & de tout ce qui doit former les Limites du Territoire de La Grande Bretagne du Coté du Fleuve de Mississippi, telles qu'elles sont specifiées dans l'Article 7.—L'Isle de Gorée sera évacuée par La Grande Bretagne trois Mois après l'Echange des Ratifications du present Traité;—Et L'Isle de Minorque par La France à la même Epôque, ou plutôt si faire se peut;—Et, selon les Conditions de l'Article 6., La France entrera de même en Possession des Isles de St Pierre & de Miquelon, au Bout de trois Mois après l'Echange des Ratifications du present Traité.—Les Comptoirs aux Indes Orientales seront rendûs six Mois après l'Echange des Ratifications du present Traité, ou plutôt si faire se peut.—La Place de la Havane avec tout ce qui a eté conquis dans l'Isle de Cuba, sera restituée trois Mois après l'Echange des Ratifications du present Traité, ou plutôt si faire se peut; Et en même Tems La Grande Bretagne entrera en Possession du Pays cedé par l'Espagne selon l'Article 20.—Toutes les Places & Pays de Sa Majesté Très Fidele en Europe seront restitués immediatement après l'Echange des Ratifications du present Traité; Et les Colonies, Portugaises, qui pourront avoir eté conquises, seront restituées dans l'Espace de trois Mois dans les Indes Occidentales, & de six Mois dans les Indes Orientales, après l'Echange des Ratifications du present Traité, ou plutôt si faire se peut.—Toutes les Places, dont la Restitution est stipulée ci-dessus, seront rendues avec l'Artillerie, & les Munitions, qui s'y sont trouvées lors de la Conquête.—En Consequence de quoi les Ordres necessaires seront envoyés par chacune des Hautes Parties Contractantes avec les Passeports reciproques pour les Vaisseaux, qui les porteront, immediatement après l'Echange des Ratifications du present Traité.

Article 25.

Sa Majesté Britannique, en sa Qualité d'Electeur de Brunswick Lunebourg, tant pour Lui que pour ses Heritiers & Successeurs, & tous les Etats & Possessions de Sa de Majesté en Allemagne sont compris & garantis par le present Traité de Paix.

Article 26.

Leurs Sacrées Majestés, Britannique, Très Chretienne, Catholique, & Très Fidele, promettent d'observer sincerement & de bonne Foy tous les Articles, contenûs & établis dans le present Traité; Et Elles ne souffriront pas, qu'il y soit fait de Contravention directe ou indirecte par leurs Sujets respectifs; Et les susdites Hautes Parties Contractantes se garantissent generalement & reciproquement toutes les Stipulations du present Traité.

Article 27.

Les Ratifications solemnelles du present Traité, expediées en bonne & düe Forme, seront échangées, en cette Ville de Paris, entre Les Hautes Parties Contractantes dans l'Espace d'un Mois, ou plutôt s'il est possible, à compter du Jour de la Signature du present Traité.

En Foy de quoi Nous soussignés, Leurs Ambassadeurs Extraordinaires & Ministres Plenipotentiaires avons signé de Notre Main, en leur Nom, & en Vertu de nos Plein pouvoirs, le present Traité Definitif, & y avons fait apposer le Cachet de Nos Armes.

Fait à Paris le dix de Fevrier mil sept cent soixante trois.

Bedford C. P. S. Choiseul duc de Praslin. el Marqs de Grimaldi.

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ARTICLES SEPARÉS

1.

Quelques uns des Titres, employes par les Puissances Contractantes, soit dans les Pleinpouvoirs, et autres Actes, pendant le Cours de la Negotiation, soit dans le Preambule du present Traité, n'etant pas generalement reconnus, il a été convenu, qu'il ne pourroit jamais en resulter aucun prejudice pour aucune des dites Parties Contractantes, et que les Titres, pris ou omis, de part et d'autre, à l'Occasion de la dite Negociation, et du present Traité, ne pourront etre cités, ni tirés à Consequence.

2.

Il a été convenu et arreté que la Langue Françoise, employée dans tous les Exemplaires du present Traité, ne formera point un Exemple, qui puisse etre allegué, ni tiré à consequence, ni porter prejudice, en aucune Maniere, à aucune des Puissances Contractantes ; Et que l'on se conformera, a l'avenir, à ce qui á été observé, et doit etre observé, à l'egard, et de la Part, des Puissances, qui sont en usage, et en Possession, de donner, et de recevoir, des Exemplaires, de semblables Traités, en une autre Langue que la Françoise.—Le present Traité ne laissant pas d'avoir la même Force et Vertu, que si le susdit Usage y avoit été observé.

3.

Quoique le Roy de Portugal n'ait pas signé le present Traité definitif, Leurs Majestés Britannique, Très Chretienne, et Catholique reconnoissent néanmoins, que Sa Majesté Très Fidele y est formellement comprise comme partie contractante, et comme si elle avoit expressement Signé le dit Traité ; En Consequence, Leurs Majestés Britannique, Très Chretienne et Catholique, s'engagent respectivement et conjointement avec Sa Majesté Très Fidele, de la façon la plus expresse et la plus obligatoire, a l'Execution de toutes, et chacune des clauses, contenües dans le dit Traité, moyennant Son Acte d'Accession.

Les presens Articles separés auront la meme Force, que s'ils etoient inserés dans le Traité.

En Foy de quoi nous Soussignés Ambassadeurs Extraordinaires et Ministres Plenipotentiaires de Leurs Majestes Britannique, Tres Chretienne, et Catholique, avons Signé les presens Articles separés, et y avons fait apposer le Cachet de Nos Armes.

Fait à Paris le Dix de Fevrier Mil sept cent soixante et trois.

Bedford C. P.S. Choiseul duc de Praslin. el Marq^s de Grimaldi.

{L.S.} {L.S.} {L.S.}

GEORGIUS R.

Georgius Tertius, Dei Gratiâ, Magnæ Britanniæ Franciæ, et Hiberniæ Rex, Fidei Defensor, Dux Brunsvicensis et Luneburgensis, sacri Romani Imperii Archi-Thesaurarius, et Princeps Elector &c^a : Omnibus et singulis ad quos præsentes hæ Literæ pervenerint, Salutem : Cum ad Pacem perficiendam inter Nos, et Bonum Fratrem Nostrum Regem Fidelissimum ex unâ Parte, et bonos Fratres Nostros Reges Christianissimum et Catholicum, ex alterâ, quæ jam, signatis apud Fontainebleau Die Mensis currentis Tertio Articulis Preliminariis, feliciter inchoata est, eamque ad Finem exoptatum perducendam, Virum aliquem idoneum ex Nostrâ Parte, plenâ Auctoritate munire Nobis è Re visum sit ;—Sciatis quod Nos Fide, Judicio, atque in Rebus maximi Momenti tractandis Usu ac Solertiâ, perdilecti et perquàm Fidelis, Consanguinei, et Consiliarii Nostri, Johannis Ducis et Comitis de Bedford, Marchionis de Tavistock, Baronis Russel de

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Cheneys, Baronis Russel de Thornhaugh ; et Baronis Howland de Streatham, Exercituum Nostrorum Locum tenentis Generalis, Privati Nostri Sigilli Custodis, Comitatuum Bedfordiæ et Devoniæ Locum tenentis, et Custodis Rotulorum, Nobilissimi Ordinis Nostri Periscelidis Equitis, et Legati Nostri Extraordinarii et Plenipotentiarii apud Bonum Fratrem Nostrum Regem Christianissimum plurimum confisi, Eundem nominavimus, fecimus constituimus, et ordinavimus, quemadmodum per præsentes, nominamus, facimus, constituimus et ordinamus, verum, certum, et indubitatum Ministrum, Commissarium, Deputatum, Procuratorem, et Plenipotentiarium Nostrum, dantes Eidem, omnem, et omnimodam Potestatem, Facultatem, Authoritatemque, necnon Mandatum generale, pariter ac speciale, (ita tamen ut generale speciali non deroget, nec è contrà) pro Nobis et Nostro Nomine, unà cum Legatis, Commissariis Deputatis, et Plenipotentiariis Principum quorum interesse poterit, sufficienti itidem Potestate atque Authoritate instructis, tam singulatim ac divisim, quam aggregatim ac conjunctim, congrediendi et colloquendi, atque cum Ipsis de Pace firmâ et stabili, sincerâque Amicitiâ et Concordiâ, quantocius restituendis, conveniendi, tractandi, consulendi, et concludendi, idque omne quod ita conventum et conclusum fuerit, pro Nobis, et Nostro Nomine, subsignandi, atque Tractatum, Tractatusve, super ita conventis et conclusis, conficiendi, omniaque alia quæ ad Opus supra dictum feliciter exequendum pertinent, transigendi, tam amplis Modo et Formâ, ac Vi, Effectuque pari, ac Nos, si interessemus, facere, et præstare possemus ; Spondentes, et in Verbo Regio promittentes, Nos omnia et singula quæcunque à dicto Nostro Plenipotentiario transigi et concludi contigerit, gratum, ratum, et acceptum, omni meliori Modo, habituros, neque passuros unqam, ut in toto, vel in Parte, à quopiam violentur, aut ut eïs in contrarium eatur. In quorum omnium majorem Fidem et Robur Præsentibus, Manu Nostrâ Regiâ signatis, Magnum Nostrum Magnæ Britanniæ Sigillum appendi fecimus. Quæ dabantur in Palatio Nostro Divi Jacobi Die Duodecimo Mensis Novembris Anno Domini Millesimo Septengentesimo Sexagesimo Secundo, Regnique Nostri Tertio.

Louis, par la Grace de Dieu, Roi de france et de Navarre. à tous ceux qui ces presentes Lettres verront, Salut. comme les Preliminaires signés à fontainebleau le troisieme novembre de l'année derniere, ont posé les fondemens de la Paix retablie entre nous et notre Très cher et très amè bon frere et Cousin le Roi d'Espagne d'une part, et notre Très cher et très amè bon frere le Roy de la Grande Bretagne, et notre Très cher et très amè bon frere et Cousin le Roi de Portugal de l'autre, nous n'avons eû rien plus à cœur depuis cette heureuse époque, que de consolider et affermir de la façon la plus durable un si salutaire et si important ouvrage par un Traité solemnel et definitif entre nous et les dittes Puissances. Pour ces causes et autres bonnes considerations à ce nous mouvans, nous confiant entierement en la capacité et experience, zêle et fidelité pour notre service de notre Très cher et bien amè Cousin Cesar Gabriel de Choiseul, Duc de Praslin, Pair de france, Chevalier de nos Ordres, Lieutenant General de nos Armées et de la Province de Bretagne, Conseiller en tous nos Conseils, Ministre et Secretaire d'Etat et de nos Commandemens et finances, nous l'avons nommé Commis et deputé et par ces presentes signées de notre main, le nommons, commettons et députons notre Ministre Plenipotentiaire, lui donnant plein et absolu pouvoir d'agir en cette qualité et de conferer, negotier, Traiter et convenir conjointement, avec le Ministre Plenipotentiaire de notre Très cher et Très Amè bon frere le Roi de la Grande Bretagne, le Ministre Plenipotentiaire de notre Très cher et très Amè bon frere et cousin le Roi d'Espagne et le Ministre Plenipotentiaire de notre Très cher et très Amè bon frere et Cousin le Roi de Portugal, revêtus de Pleinpouvoirs en bonne forme, arrêter conclure et signer tels articles, conditions, conventions, declarations, Traité définitif, accessions et autres actes quelconques qu'Il Jugera convenables pour assûrer et affermir le grand ouvrage de la Paix ; le tout avec la même liberté et autorité que nous pourrions faire nous mêmes, si nous y etions presens en personne, encore qu'il yeût quelque chose qui requit un mandement plus special qu'il n'est contenu dans ces presentes ; Promettant en foi et parole de Roy, d'avoir agréable, tenir ferme et stable à Toujours, accomplir et executer ponctuellement tout ce que notre dit Cousin le Duc de Praslin aura stipulé, promis et signé en vertu du present pleinpouvoir sans jamais y contrevenir, ni permettre

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qu'il y Soit contrevenu pour quelque cause et sous quelque pretexte que ce puisse être, comme aussi d'en faire expedier nos Lettres de ratifications en bonne forme et de les faire delivrer pour être echangées dans le têms dont il Sera convenu. Car tel est notre Plaisir. En temoin de quoi nous avons fait mettre notre scel à ces presentes. Donné à Versailles le Septieme jour du mois de fevrier l'an de grace mille sept cent soixante trois et de notre Regne le quarante huitieme, signé Louis et sur le repli, Par le Roi, le Duc de Choiseul. Scellé du grand sceau de cire jaune,.

Don Carlos, por la Gracia de Dios, Rey de Castilla, de Leon, de Aragon, de las dos Sicilias, de Jerusalem, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Mallorca, de Sevilla, de Cerdêna, de Cordova, de Corcega, de Murcia, de Jaen, de los Algarbes, de Algecira, de Gibraltar, de las Islas de Canaria, de las Indias Orientales y Occidentales, Islas y Tierra firme del Mar Oceano; Archiduque de Austria; Duque de Borgôna, de Brabante, y Milan; Conde de Abspurg, de Flandes, del Tirol y Barcelona; Senôr de Vizcaya, y de Molina &c^a: Por quanto haviendose, concluido y firmado en el Real sitio de Fontainebleau el Dia tres de Noviembre del presente Anô, y cangeadose las respectivas Ratificaciones el veinte y dos del mismo mes por Ministros autorizados á este Fin, los Preliminares de una Paz solida y duradera entre esta Corona, y la de Francia de una Parte, la de Inglaterra y la de Portugal de Otra; en los quales se promete venir luego á un tratado Definitivo, estableciendo y arreglando los Puntos Capitales sobre que ha de girar; y respecto â que del mismo modo que concedi mi Plenopoder para tratar, ajustar, y firmar los mencionados Preliminares â vos Don Geronimo Grimaldi, Marques de Grimaldi, Caballero de la Orden de Santi Spiritus, mi Gentil-hombre de Camara con Ejercicio, y mi Embajador Extraordinario al Rey Christianissimo, Se necessita que a Vos, ú â otro le conceda para tratar, ajsustar, y firmar el mencionado prometido tratado Definitivo de Paz: Por tanto estando vos el citado Don Geronimo Grimaldi, Marques de Grimaldi en el parage necessario y teniendo yo cada dia mas Motivos para fiaros esta, y otras tales Importancias de mi Corona, por vuestra acrisolada Fidelidad y zelo, Capacidad y Prudencia; he venido en constituiros mi Ministro Plenipotentiario y en concederos todo mi Plenopoder para que en mi Nombre y representando mi propria Persona, Trateis, Arregleis, convengais y firmeis dicho tratado Definitivo de Paz, entre mi Corona y la de Francia de una Parte, la de Inglaterra y la de Portugal de Otra, con los Ministros que estuvieren autorizados igual y especialmente por sus respectivos Soberanos ad mismo Fin: dando, como doi des de ahora por grato y rato todo lo que assi Trateis Concluyais y firmeis; y ofreciendo baso mi palabra Real que lo observaré y cumpliré, lo haré observar y cumplir como si por mi mismo lo huviesse tratado, concludo, y firmado. En fe de lo qual hize expedir el presente firmado de mi Mano, sellado con mi Sello secreto, y refrendado de mi infrascrito Consejero de Estado, y mi Primer Secretario del Despacho de Estado y de la Guerra. En Buen Retiro â Diez de Deciembre de mil setecientos Sesenta y dos.

Firmado = YO EL REY.

Y mas abajo = RICARDO WALL.

endorsed: Definitive Treaty, and Three Separate Articles, between His Majesty, the Most Christian King, and the Catholick King. dated Paris Feb^ry 10^th 1763.

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(*Translation.*)[1]

The definitive Treaty of Peace and Friendship between his Britannick Majesty, *the* Most Christian King, *and the* King *of* Spain. *Concluded at* Paris *the 10th day of* February, 1763. *To which the* King *of* Portugal *acceded on the same day.* (Printed from the Copy.)

In the Name of the Most Holy and Undivided Trinity, Father, Son, and Holy Ghost. So be it.

Be it known to all those whom it shall, or may, in any manner, belong,

It has pleased the Most High to diffuse the spirit of union and concord among the Princes, whose divisions had spread troubles in the four parts of the world, and to inspire them with the inclination to cause the comforts of peace to succeed to the misfortunes of a long and bloody war, which having arisen between England and France during the reign of the Most Serene and Most Potent Prince, George the Second, by the grace of God, King of Great Britain, of glorious memory, continued under the reign of the Most Serene and Most Potent Prince, George the Third, his successor, and, in its progress, communicated itself to Spain and Portugal: Consequently, the Most Serene and Most Potent Prince, George the Third, by the grace of God, King of Great Britain, France, and Ireland, Duke of Brunswick and Lunenbourg, Arch Treasurer and Elector of the Holy Roman Empire; the Most Serene and Most Potent Prince, Lewis the Fifteenth, by the grace of God, Most Christian King; and the Most Serene and Most Potent Prince, Charles the Third, by the grace of God, King of Spain and of the Indies, after having laid the foundations of peace in the preliminaries signed at Fontainbleau the third of November last; and the Most Serene and Most Potent Prince, Don Joseph the First, by the grace of God, King of Portugal and of the Algarves, after having acceded thereto, determined to compleat, without delay, this great and important work. For this purpose, the high contracting parties have named and appointed their respective Ambassadors Extraordinary and Ministers Plenipotentiary, viz. his Sacred Majesty the King of Great Britain, the Most Illustrious and Most Excellent Lord, John Duke and Earl of Bedford, Marquis of Tavistock, &c. his Minister of State, Lieutenant General of his Armies, Keeper of his Privy Seal, Knight of the Most Noble Order of the Garter, and his Ambassador Extraordinary and Minister Plenipotentiary to his Most Christian Majesty; his Sacred Majesty the Most Christian King, the Most Illustrious and Most Excellent Lord, Cæsar Gabriel de Choiseul, Duke of Praslin, Peer of France, Knight of his Orders, Lieutenant General of his Armies and of the province of Britanny, Counsellor of all his Counsils, and Minister and Secretary of State, and of his Commands and Finances; his Sacred Majesty the Catholick King, the Most Illustrious and Most Excellent Lord, Don Jerome Grimaldi, Marquis de Grimaldi, Knight of the Most Christian King's Orders, Gentleman of his Catholick Majesty's Bedchamber in Employment, and his Ambassador Extraordinary to his Most Christian Majesty; his Sacred Majesty the Most Faithful King, the Most Illustrious and Most Excellent Lord, Martin de Mello and Castro, Knight professed of the Order of Christ, of his Most Faithful Majesty's Council, and his Ambassador and Minister Plenipotentiary to his Most Christian Majesty.

Who, after having duly communicated to each other their full powers, in good form, copies whereof are transcribed at the end of the present treaty of peace, have agreed upon the articles, the tenor of which is as follows:

Article I. There shall be a Christian, universal, and perpetual peace, as well by sea as by land, and a sincere and constant friendship shall be re established between their Britannick, Most Christian, Catholick, and Most Faithful Majesties, and between their heirs and successors, kingdoms, dominions, provinces, countries, subjects, and

[1] The English version of the Treaty of 1763 is taken from the Collection of Treaties compiled by the Hon. Charles Jenkinson, afterwards Lord Liverpool, and which appeared under the following title:—"A Collection of all the Treaties of Peace, Alliance, and Commerce, Between Great-Britain and other Powers. From the Treaty signed at Munster in 1648, to the Treaties signed at Paris in 1783. By the Right Hon. Charles Jenkinson. In three Volumes." The Treaty of 1763 is contained in Vol. III, pp. 177-197.

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vassals, of what quality or condition soever they be, without exception of places or of persons: So that the high contracting parties shall give the greatest attention to maintain between themselves and their said dominions and subjects this reciprocal friendship and correspondence, without permitting, on either side, any kind of hostilities, by sea or by land, to be committed from henceforth, for any cause, or under any pretence whatsoever, and every thing shall be carefully avoided which might hereafter prejudice the union happily re-established, applying themselves, on the contrary, on every occasion, to procure for each other whatever may contribute to their mutual glory, interests, and advantages, without giving any assistance or protection, directly or indirectly, to those who would cause any prejudice to either of the high contracting parties: there shall be a general oblivion of every thing that may have been done or committed before or since the commencement of the war which is just ended.

II. The treaties of Westphalia of 1648; those of Madrid between the Crowns of Great Britain and Spain of 1667, and 1670; the treaties of peace of Nimeguen of 1678, and 1679; of Ryswick of 1697; those of peace and of commerce of Utrecht of 1713; that of Baden of 1714; the treaty of the triple alliance of the Hague of 1717: that of the quadruple alliance of London of 1718; the treaty of peace of Vienna of 1738; the definitive treaty of Aix la Chapelle of 1748; and that of Madrid, between the Crowns of Great Britain and Spain of 1750: as well as the treaties between the Crowns of Spain and Portugal of the 13th of February, 1668; of the 6th of February, 1715; and of the 12th of February, 1761; and that of the 11th of April, 1713, between France and Portugal with the guaranties of Great Britain, serve as a basis and foundation to the peace, and to the present treaty: and for this purpose they are all renewed and confirmed in the best form, as well as all the general, which subsisted between the high contracting parties before the war, as if they were inserted here word for word, so that they are to be exactly observed, for the future, in their whole tenor, and religiously executed on all sides, in all their points, which shall not be derogated from by the present treaty, notwithstanding all that may have been stipulated to the contrary by any of the high contracting parties: and all the said parties declare, that they will not suffer any privilege, favour, or indulgence to subsist, contrary to the treaties above confirmed, except what shall have been agreed and stipulated by the present treaty.

III. All the prisoners made, on all sides, as well by land as by sea, and the hostages carried away or given during the war, and to this day, shall be restored, without ransom, six weeks, at least, to be computed from the day of the exchange of the ratification of the present treaty, each crown respectively paying the advances which shall have been made for the subsistance and maintenance of their prisoners by the Sovereign of the country where they shall have been detained, according to the attested receipts and estimates and other authentic vouchers which shall be furnished on one side and the other. And securities shall be reciprocally given for the payment of the debts which the prisoners shall have contracted in the countries where they have been detained until their entire liberty. And all the ships of war and merchant vessels which shall have been taken since the expiration of the terms agreed upon for the cessation of hostilities by sea shall likewise be restored, *bonâ fide*, with all their crews and cargoes: and the execution of this article shall be proceeded upon immediately after the exchange of the ratifications of this treaty.

IV. His Most Christian Majesty renounces all pretensions which he has heretofore formed or might have formed to Nova Scotia or Acadia in all its parts, and guaranties the whole of it, and with all its dependencies, to the King of Great Britain: Moreover, his Most Christian Majesty cedes and guaranties to his said Britannick Majesty, in full right, Canada, with all its dependencies, as well as the island of Cape Breton, and all the other islands and coasts in the gulph and river of St. Lawrence, and in general, every thing that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights acquired by treaty, or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, lands, islands, places, coasts, and their inhabitants, so that the Most Christian King cedes and makes over the whole to the said King, and to the Crown of Great Britain, and that in the most ample manner and form, without restriction, and without

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any liberty to depart from the said cession and guaranty under any pretence, or to disturb Great Britain in the possessions above mentioned. His Britannick Majesty, on his side, agrees to grant the liberty of the Catholick religion to the inhabitants of Canada: he will, in consequence, give the most precise and most effectual orders, that his new Roman Catholick subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit. His Britannick Majesty farther agrees, that the French inhabitants, or others who had been subjects of the Most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of his Britannick Majesty, and bring away their effects as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts or of criminal prosecutions: The term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty.

V. The subjects of France shall have the liberty of fishing and drying on a part of the coasts of the island of Newfoundland, such as it is specified in the XIIIth article of the treaty of Utrecht; which article is renewed and confirmed by the present treaty, (except what relates to the island of Cape Breton, as well as to the other islands and coasts in the mouth and in the gulph of St. Lawrence:) And his Britannick Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the gulph of St. Lawrence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent as those of the islands situated in the said gulph of St. Lawrence. And as to what relates to the fishery on the coasts of the island of Cape Breton, out of the said gulph, the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coasts of the island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and every where else out of the said gulph, shall remain on the foot of former treaties.

VI. The King of Great Britain cedes the islands of St. Pierre and Macquelon, in full right, to his Most Christian Majesty, to serve as a shelter to the French fishermen; and his said Most Christian Majesty engages not to fortify the said islands; to erect no buildings upon them but merely for the conveniency of the fishery; and to keep upon them a guard of fifty men only for the police.

VII. In order to re-establish peace on solid and durable foundations, and to remove for ever all subject of dispute with regard to the limits of the British and French territories on the continent of America; it is agreed, that, for the future, the confines between the dominions of his Britannick Majesty and those of his Most Christian Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the River Mississippi, from its source to the river Iberville, and from thence, by a line drawn along the middle of this river, and the lakes Maurepas and Potchartrain to the sea; and for this purpose, the Most Christian King cedes in full right, and guaranties to his Britannick Majesty the river and port of the Mobile, and every thing which he possesses, or ought to possess, on the left side of the river Mississippi, except the town of New Orleans and the island in which it is situated, which shall remain to France, provided that the navigation of the river Mississippi shall be equally free, as well to the subjects of Great Britain as to those of France, in its whole breadth and length, from its source to the sea, and expressly that part which is between the said island of New Orleans and the right bank of that river, as well as the passage both in and out of its mouth: It is farther stipulated, that the vessels belonging to the subjects of either nation shall not be stopped, visited, or subjected to the payment of any duty whatsoever. The stipulations inserted in the IVth article, in favour of the inhabitants of Canada shall also take place with regard to the inhabitants of the countries ceded by this article.

VIII. The King of Great Britain shall restore to France the islands of Guadaloupe, of Mariegalante, of Desirade, of Martinico, and of Belleisle; and the fortresses of these islands shall be restored in the same condition they were in when they were

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conquered by the British arms, provided that his Britannick Majesty's subjects, who shall have settled in the said islands, or those who shall have any commercial affairs to settle there or in other places restored to France by the present treaty, shall have liberty to sell their lands and their estates, to settle their affairs, to recover their debts, and to bring away their effects as well as their persons, on board vessels, which they shall be permitted to send to the said islands and other places restored as above, and which shall serve for this use only, without being restrained on account of their religion, or under any other pretence whatsoever, except that of debts or of criminal prosecutions: and for this purpose, the term of eighteen months is allowed to his Britannick Majesty's subjects, to be computed from the day of the exchange of the ratifications of the present treaty; but, as the liberty granted to his Britannick Majesty's subjects, to bring away their persons and their effects, in vessels of their nation, may be liable to abuses if precautions were not taken to prevent them; it has been expressly agreed between his Britannick Majesty and his Most Christian Majesty, that the number of English vessels which have leave to go to the said islands and places restored to France, shall be limited, as well as the number of tons of each one; that they shall go in ballast; shall set sail at a fixed time; and shall make one voyage only; all the effects belonging to the English being to be embarked at the same time. It has been farther agreed, that his Most Christian Majesty shall cause the necessary passports to be given to the said vessels; that, for the greater security, it shall be allowed to place two French clerks or guards in each of the said vessels, which shall be visited in the landing places and ports of the said islands and places restored to France, and that the merchandize which shall be found therein shall be confiscated.

IX. The Most Christian King cedes and guaranties to his Britannick Majesty, in full right, the islands of Grenada, and the Grenadines, with the same stipulations in favour of the inhabitants of this colony, inserted in the IVth article for those of Canada: And the partition of the islands called neutral, is agreed and fixed, so that those of St. Vincent, Dominico, and Tobago, shall remain in full right to Great Britain, and that of St. Lucia shall be delivered to France, to enjoy the same likewise in full right, and the high contracting parties guaranty the partition so stipulated.

X. His Britannick Majesty shall restore to France the island of Goree in the condition it was in when conquered: and his Most Christian Majesty cedes, in full right, and guaranties to the King of Great Britain the river Senegal, with the forts and factories of St. Lewis, Podor, and Galam, and with all the rights and dependencies of the said river Senegal.

XI. In the East Indies Great Britain shall restore to France, in the condition they are now in, the different factories which that Crown possessed, as well as on the coast of Coromandel and Orixa as on that of Malabar, as also in Bengal, at the beginning of the year 1749. And his Most Christian Majesty renounces all pretension to the acquisitions which he has made on the coast of Coromandel and Orixa since the said beginning of the year 1749. His Most Christian Majesty shall restore, on his side, all that he may have conquered from Great Britain in the East Indies during the present war; and will expressly cause Nattal and Tapanoully, in the island of Sumatra, to be restored; he engages farther, not to erect fortifications, or to keep troops in any part of the dominions of the Subah of Bengal. And in order to preserve future peace on the coast of Coromandel and Orixa, the English and French shall acknowledge Mahomet Ally Khan for lawful Nabob of the Carnatick, and Salabat Jing for lawful Subah of the Decan; and both parties shall renounce all demands and pretensions of satisfaction with which they might charge each other, or their Indian allies, for the depredations or pillage committed on the one side or on the other during the war.

XII. The island of Minorca shall be restored to his Britannick Majesty, as well as Fort St. Philip, in the same condition they were in when conquered by the arms of the Most Christian King; and with the artillery which was there when the said island and the said fort were taken.

XIII. The town and port of Dunkirk shall be put into the state fixed by the last treaty of Aix la Chapelle, and by former treaties. The Cunette shall be destroyed immediately after the exchange of the ratifications of the present treaty, as well as the

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forts and batteries which defend the entrance on the side of the sea; and provision shall be made at the same time for the wholesomeness of the air, and for the health of the inhabitants, by some other means, to the satisfaction of the King of Great Britain.

XIV. France shall restore all the countries belonging to the Electorate of Hanover, to the Landgrave of Hesse, to the Duke of Brunswick, and to the Count of La Lippe Buckebourg, which are or shall be occupied by his Most Christian Majesty's arms: the fortresses of these different countries shall be restored in the same condition they were in when conquered by the French arms; and the pieces of artillery, which shall have been carried elsewhere, shall be replaced by the same number, of the same bore, weight and metal.

XV. In case the stipulations contained in the XIIIth article of the preliminaries should not be compleated at the time of the signature of the present treaty, as well with regard to the evacuations to be made by the armies of France of the fortresses of Cleves, Wezel, Guelders, and of all the countries belonging to the King of Prussia, as with regard to the evacuations to be made by the British and French armies of the countries which they occupy in Westphalia, Lower Saxony, on the Lower Rhine, the Upper Rhine, and in all the empire; and to the retreat of the troops into the dominions of their respective Sovereigns: their Britannick and Most Christian Majesties promise to proceed, *bonâ fide*, with all the dispatch the case will permit of to the said evacuations, the entire completion whereof they stipulate before the 15th of March next, or sooner if it can be done; and their Britannick and Most Christian Majesties farther engage and promise to each other, not to furnish any succours of any kind to their respective allies who shall continue engaged in the war in Germany.

XVI. The decision of the prizes made in time of peace by the subjects of Great Britain, on the Spaniards, shall be referred to the Courts of Justice of the Admiralty of Great Britain, conformably to the rules established among all nations, so that the validity of the said prizes, between the British and Spanish nations, shall be decided and judged, according to the law of nations, and according to treaties, in the Courts of Justice of the nation who shall have made the capture.

XVII. His Britannick Majesty shall cause to be demolished all the fortifications which his subjects shall have erected in the bay of Honduras, and other places of the territory of Spain in that part of the world, four months after the ratification of the present treaty: and his Catholick Majesty shall not permit his Britannick Majesty's subjects, or their workmen, to be disturbed or molested under any pretence whatsoever in the said places, in their occupation of cutting, loading, and carrying away log-wood; and for this purpose, they may build, without hindrance, and occupy, without interruption, the houses and magazines necessary for them, for their families, and for their effects: and his Catholick Majesty assures to them, by this article, the full enjoyment of those advantages and powers on the Spanish coasts and territories, as above stipulated, immediately after the ratification of the present treaty.

XVIII. His Catholick Majesty desists, as well for himself as for his successors, from all pretension which he may have formed in favour of the Guipuscoans, and other his subjects, to the right of fishing in the neighbourhood of the island of Newfoundland.

XIX. The King of Great Britain shall restore to Spain all the territory which he has conquered in the island of Cuba, with the fortress of the Havannah; and this fortress, as well as all the other fortresses of the said island, shall be restored in the same condition they were in when conquered by his Britannick Majesty's arms, provided that his Britannick Majesty's subjects who shall have settled in the said island, restored to Spian by the present treaty, or those who shall have any commercial affairs to settle there, shall have liberty to sell their lands and their estates, to settle their affairs, recover their debts, and to bring away their effects, as well as their persons, on board vessels which they shall be permitted to send to the said island restored as above, and which shall serve for that use only, without being restrained on account of their religion, or under any other pretence whatsoever, except that of debts or of criminal prosecutions: And for this purpose, the term of eighteen months is allowed to his Britannick Majesty's subjects, to be computed from the day of the exchange of the ratifications of the present treaty: but as the liberty granted to his Britannick Majesty's subjects, to

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bring away their persons and their effects, in vessels of their nation, may be liable to abuses if precautions were not taken to prevent them; it has been expressly agreed between his Britannick Majesty and his Catholick Majesty, that the number of English vessels which shall have leave to go to the said island restored to Spain shall be limited, as well as the number of tons of each one; that they shall go in ballast; shall set sail at a fixed time; and shall make one voyage only; all the effects belonging to the English being to be embarked at the same time: it has been farther agreed, that his Catholick Majesty shall cause the necessary passports to be given to the said vessels; that for the greater security, it shall be allowed to place two Spanish clerks or guards in each of the said vessels, which shall be visited in the landing places and ports of the said island restored to Spain, and that the merchandize which shall be found therein shall be confiscated.

XX. In consequence of the restitution stipulated in the preceding article, his Catholick Majesty cedes and guaranties, in full right, to his Britannick Majesty, Florida, with Fort St. Augustin, and the Bay of Pensacola, as well as all that Spain possesses on the continent of North America, to the East or to the South East of the river Mississippi. And, in general, every thing that depends on the said countries and lands, with the sovereignty, property, possession, and all rights, acquired by treaties or otherwise, which the Catholick King and the Crown of Spain have had till now over the said countries, lands, places, and their inhabitants; so that the Catholick King cedes and makes over the whole to the said King and to the Crown of Great Britain, and that in the most ample manner and form. His Britannick Majesty agrees, on his side, to grant to the inhabitants of the countries above ceded, the liberty of the Catholick religion: he will, consequently, give the most express and the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit. His Britannick Majesty farther agrees, that the Spanish inhabitants, or others who had been subjects of the Catholick King in the said countries, may retire, with all safety and freedom, wherever they think proper; and may sell their estates, provided it be to his Britannick Majesty's subjects, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debts, or of criminal prosecutions: the term limited for this emigration being fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty. It is moreover stipulated, that his Catholick Majesty shall have power to cause all the effects that may belong to him, to be brought away, whether it be artillery or other things.

XXI. The French and Spanish troops shall evacuate all the territories, lands, towns, places, and castles, of his Most faithful Majesty, in Europe, without any reserve, which shall have been conquered by the armies of France and Spain, and shall restore them in the same condition they were in when conquered, with the same artillery and ammunition, which were found there: And with regard to the Portuguese Colonies in America, Africa, or in the East Indies, if any change shall have happened there, all things shall be restored on the same footing they were in, and conformably to the preceding treaties which subsisted between the Courts of France, Spain, and Portugal, before the present war.

XXII. All the papers, letters, documents, and archives, which were found in the countries, territories, towns and places that are restored, and those belonging to the countries ceded, shall be, respectively and *bonâ fide*, delivered, or furnished at the same time, if possible, that possession is taken, or, at latest, four months after the exchange of the ratifications of the present treaty, in whatever places the said papers or documents may be found.

XXIII. All the countries and territories, which may have been conquered, in whatsoever part of the world, by the arms of their Britannick and Most Faithful Majesties, as well as by those of their Most Christian and Catholick Majesties, which are not included in the present treaty, either under the title of cessions, or under the title of restitutions, shall be restored without difficulty, and without requiring any compensations.

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XXIV. As it is necessary to assign a fixed epoch for the restitutions and the evacuations, to be made by each of the high contracting parties, it is agreed, that the British and French troops shall compleat, before the 15th of March next, all that shall remain to be executed of the XIIth and XIIIth articles of the preliminaries, signed the 3d day of November last, with regard to the evacuation to be made in the Empire, or elsewhere. The island of Belleisle shall be evacuated six weeks after the exchange of the ratifications of the present treaty, or sooner if it can be done. Guadaloupe, Desirade, Mariegalante Martinico, and St. Lucia, three months after the exchange of the ratifications of the present treaty, or sooner if it can be done. Great Britain shall likewise, at the end of three months after the exchange of the ratifications of the present treaty, or sooner if it can be done, enter into possession of the river and port of the Mobile, and of all that is to form the limits of the territory of Great Britain, on the side of the river Mississippi, as they are specified in the VIIth article. The island of Goree shall be evacuated by Great Britain, three months after the exchange of the ratifications of the present treaty; and the island of Minorca by France, at the same epoch, or sooner if it can be done: And according to the conditions of the VIth article, France shall likewise enter into possession of the islands of St. Peter, and of Miquelon, at the end of three months after the exchange of the ratifications of the present treaty. The Factories in the East Indies shall be restored six months after the exchange of the ratifications of the present treaty, or sooner if it can be done. The fortress of the Havannah, with all that has been conquered in the island of Cuba, shall be restored three months after the exchange of the ratifications of the present treaty, or sooner if it can be done: And, at the same time, Great Britain shall enter into possession of the country ceded by Spain according to the XXth article. All the places and countries of his most Faithful Majesty, in Europe, shall be restored immediately after the exchange of the ratification of the present treaty: And the Portuguese colonies, which may have been conquered, shall be restored in the space of three months in the West Indies, and of six months in the East Indies, after the exchange of the ratifications of the present treaty, or sooner if it can be done. All the fortresses, the restitution whereof is stipulated above, shall be restored with the artillery and ammunition, which were found there at the time of the conquest. In consequence whereof, the necessary orders shall be sent by each of the high contracting parties, with reciprocal passports for the ships that shall carry them, immediately after the exchange of the ratifications of the present treaty.

XXV. His Britannick Majesty, as Elector of Brunswick Lunenbourg, as well for himself as for his heirs and successors, and all the dominions and possessions of his said Majesty in Germany, are included and guarantied by the present treaty of peace.

XXVI. Their sacred Britannick, Most Christian, Catholick, and Most Faithful Majesties, promise to observe sincerely and *bonâ fide*, all the articles contained and settled in the present treaty; and they will not suffer the same to be infringed, directly or indirectly, by their respective subjects; and the said high contracting parties, generally and reciprocally, guaranty to each other all the stipulations of the present treaty.

XXVII. The solemn ratifications of the present treaty, expedited in good and due form, shall be exchanged in this city of Paris, between the high contracting parties, in the space of a month, or sooner if possible, to be computed from the day of the signature of the present treaty.

In witness whereof, we the underwritten their Ambassadors Extraordinary, and Ministers Plenipotentiary, have signed with our hand, in their name, and in virtue of our full powers, have signed the present definitive treaty, and have caused the seal of our arms to be put thereto. Done at Paris the tenth day of February, 1763.

Bedford, C.P.S.	*Choiseul, Duc de Praslin.*	*El Marq. de Grimaldi.*
(L.S.)	(L.S.)	(L.S.)

Separate Articles.

I. Some of the titles made use of by the contracting powers, either in the full powers, and other acts, during the course of the negociation, or in the preamble of the present treaty, not being generally acknowledged; it has been agreed, that no prejudice shall ever re-

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sult therefrom to any of the said contracting parties, and that the titles, taken or omitted on either side, on occasion of the said negociation, and of the present treaty, shall not be cited or quoted as a precedent.

II. It has been agreed and determined, that the French language made use of in all the copies of the present treaty, shall not become an example which may be alledged, or made a precedent of, or prejudice, in any manner, any of the contracting powers; and that they shall conform themselves, for the future, to what has been observed, and ought to be observed, with regard to, and on the part of powers, who are used, and have a right, to give and to receive copies of like treaties in another language than French; the present treaty having still the same force and effect, as if the aforesaid custom had been therein observed.

III. Though the King of Portugal has not signed the present definitive treaty, their Britannick, Most Christian, and Catholick Majesties, acknowledge, nevertheless, that his Most Faithful Majesty is formally included therein as a contracting party, and as if he had expressly signed the said treaty: Consequently, their Britannick, Most Christian, and Catholick Majesties, respectively and conjointly, promise to his Most Faithful Majesty, in the most express and most binding manner, the execution of all and every the clauses, contained in the said treaty, on his act of accession.

The present Separate Articles shall have the same force as if they were inserted in the treaty.

In witness whereof, We the under-written Ambassadors Extraordinary, and Ministers Plenipotentiary of their Britannick, Most Christian and Catholick Majesties, have signed the present separate Articles, and have caused the seal of our arms to be put thereto.

Done at Paris, the 10th of February, 1763.

Bedford, C.P.S. (L.S.)	*Choiseul, Duc de Praslin.* (L.S.)	*El Marq. de Grimaldi.* (L.S.)

His Britannick Majesty's full Power.

GEORGE R.

George the Third, by the grace of God, King of Great Britain, France and Ireland, Defender of the Faith, Duke of Brunswick and Lunenbourg, Arch-Treasurer, and Prince Elector of the Holy Roman Empire, &c. To all and singular to whom these presents shall come, greeting. Whereas, in order to perfect the peace between Us and our good Brother the Most Faithful King, on the one part, and our good Brothers the Most Christian and Catholick Kings, on the other, which has been happily begun by the Preliminary Articles already signed at Fontainebleau the third of this month; and to bring the same to the desired end, We have thought proper to invest some fit person with full authority, on our part; Know ye, that We, having most entire confidence in the fidelity, judgment, skill, and ability in managing affairs of the greatest consequence, of our right trusty, and right entirely beloved Cousin and Counsellor, John Duke and Earl of Bedford, Marquis of Tavistock, Baron Russel of Cheneys, Baron Russel of Thornhaugh, and Baron Howland of Streatham, Lieutenant-general of our forces, Keeper of our Privy Seal, Lieutenant and Custos Rotulorum of the counties of Bedford and Devon, Knight of our most noble order of the Garter, and our Ambassador Extraordinary and Plenipotentiary to our good Brother the Most Christian King, have nominated, made, constituted and appointed, as by these presents, we do nominate, make, constitute, and appoint him, our true, certain, and undoubted Minister, Commissary, Deputy, Procurator and Plenipotentiary, giving to him all and all manner of power, faculty and authority, as well as our general and special command (yet so as that the general do not derogate from the special, or on the contrary) for Us and in our name, to meet and confer, as well singly and separately, as jointly, and in a body, with the Ambassadors, Commissaries, Deputies, and Plenipotentiaries of the Princes, whom it may concern, vested with sufficient power and authority for that purpose, and with them to agree upon, treat, consult and conclude, concerning the re-establishing, as soon as may be, a firm and lasting

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peace, and sincere friendship and concord; and whatever shall be so agreed and concluded, for Us and in our name, to sign, and to make a treaty or treaties, on what shall have been so agreed and concluded, and to transact every thing else that may belong to the happy completion of the aforesaid work, in as ample a manner and form, and with the same force and effect, as We ourselves, if we were present, could do and perform; engaging and promising, on our royal word, that We will approve, ratify and accept, in the best manner, whatever shall happen to be transacted and concluded by our said Plenipotentiary, and that We will never suffer any person to infringe or act contrary to the same, either in the whole or in part. In witness and confirmation whereof We have caused our great Seal of Great Britain to be affixed to these presents, signed with our royal hand. Given at our Palace at St. James's, the 12th day of November, 1762, in the third year of our reign.

His Most Christian Majesty's Full Power.

Lewis, by the grace of God, King of France and Navarre, To all who shall see these presents, Greeting. Whereas the Preliminaries, signed at Fontainbleau the third of November of the last year, laid the foundation of the peace re-established between us and our most dear and most beloved good Brother and Cousin the King of Spain, on the one part, and our most dear and most beloved good Brother the King of Great Britain, and our most dear and most beloved good Brother and Cousin the King of Portugal on the other, We have had nothing more at heart since that happy epoch, than to consolidate and strengthen in the most lasting manner, so salutary and so important a work, by a solemn and definitive treaty between Us and the said powers. For these causes, and other good considerations, Us thereunto moving, We, trusting entirely in the capacity and experience, zeal and fidelity for our service, of our most dear and well-beloved Cousin, Cæsar Gabriel de Choiseul, Duke of Praslin, Peer of France, Knight of our Orders, Lieutenant General of our Forces and of the province of Britany, Counsellor in all our Councils, Minister and Secretary of State, and of our Commands and Finances, We have named, appointed, and deputed him, and by these presents, signed with our hand, do name, appoint, and depute him our Minister Plenipotentiary, giving him full and absolute power to act in that quality, and to confer, negociate, treat and agree jointly with the Minister Plenipotentiary of our most dear and most beloved good Brother the King of Great Britain, the Minister Plenipotentiary of our most dear and most beloved good Brother and Cousin the King of Spain and the Minister Plenipotentiary of our most dear and most beloved good Brother and Cousin the King of Portugal, vested with full powers, in good form, to agree, conclude and sign such articles, conditions, conventions, declarations, definitive treaty, accessions, and other acts whatsoever, that he shall judge proper for securing and strengthening the great work of peace, the whole with the same latitude and authority that We ourselves might do, if We were there in person, even though there should be something which might require a more special order than what is contained in these presents, promising on the faith and word of a King, to approve, keep firm and stable for ever, to fulfil and execute punctually, all that our said Cousin, the Duke of Praslin, shall have stipulated, promised and signed, in virtue of the present full power, without ever acting contrary thereto, or permitting any thing contrary thereto, for any cause, or under any pretence whatsoever, as also to cause our letters of ratification to be expedited in good form, and to cause them to be delivered, in order to be exchanged within the time that shall be agreed upon. For such is our pleasure. In witness whereof, we have caused our Seal to be put to these presents. Given at Versailles the 7th day of the month of February, in the year of Grace 1763, and of our reign the forty-eighth. Signed Lewis, and on the fold, by the King, the Duke of Choiseul. Sealed with the great Seal of yellow Wax.

His Catholick Majesty's full Power.

Don Carlos, by the grace of God, King of Castille, of Leon, of Arragon, of the two Sicilies, of Jerusalem, of Navarre, of Granada, of Toledo, of Valencia, of Galicia, of

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Majorca, of Seville, of Sardinia, of Cordova, of Corsica, of Murcia, of Jaen, of the Algarves, of Algecira, of Gibraltar, of the Canary Islands, of the East and West Indies, Islands and Continent, of the Ocean, Arch Duke of Austria, Duke of Burgundy, of Brabant and Milan, Count of Hapsburg, of Flanders, of Tirol and Barcelona, Lord of Biscay and of Molino, &c. Whereas preliminaries of a solid and lasting peace between this Crown, and that of France on the one part, and that of England and Portugal on the other, were concluded and signed in the Royal Residence of Fontainbleau, the 3d of November of the present year, and the respective ratifications thereof exchanged on the 22d of the same month, by Ministers authorised for that purpose, wherein it is promised, that a definitive treaty should be forthwith entered upon, having established and regulated the chief points upon which it is to turn: and whereas in the same manner as I granted to you, Don Jerome Grimaldi, Marquis de Grimaldi, Knight of the Order of the Holy Ghost, Gentleman of my Bed-chamber with employment, and my Ambassador Extraordinary to the Most Christian King, my full power to treat, adjust, and sign the before-mentioned preliminaries, it is necessary to grant the same to you, or to some other, to treat, adjust, and sign the promised definitive treaty of peace as aforesaid: therefore, as you the said Don Jerome Grimaldi, Marquis de Grimaldi, are at the convenient place, and as I have every day fresh motives, from your approved fidelity and zeal, capacity and prudence, to entrust to you this, and other-like concerns of my Crown, I have appointed you my Minister Plenipotentiary, and granted to you my full power, to the end, that, in my name, and representing my person, you may treat, regulate, settle, and sign the said definitive treaty of peace between my Crown and that of France on the one part, that of England and that of Portugal on the other, with the Ministers who shall be equally and specially authorised by their respective Sovereigns for the same purpose; acknowledging, as I do from this time acknowledge, as accepted and ratified, whatever you shall so treat, conclude, and sign; promising, on my Royal Word, that I will observe and fulfil the same, will cause it to be observed and fulfilled, as if it had been treated, concluded, and signed by myself. In witness whereof, I have caused these presents to be dispatched, signed by my hand, sealed with my privy seal, and countersigned by my under-written Counsellor of State, and first Secretary for the department of State and of War. Buen Retiro, the 10th of December, 1762.

(Signed) I THE KING.
(And lower) *Richard Wall.*

PAPERS RELATING TO THE ESTABLISHMENT OF CIVIL GOVERNMENT IN THE TERRITORIES CEDED TO BRITAIN BY THE TREATY OF 1763.[1]

(Egremont to Lords of Trade.)

WHITEHALL May 5th 1763.

Lords of Trade

MY LORDS

His Majesty having brought the Negotiation with France & Spain to a happy Conclusion, and having given the necessary Orders for carrying into Execution the several Stipulations of the late Treaty, is now pleased to fix His Royal Attention upon the next important Object of securing to His Subjects, and extending the Enjoyment of the Advantages, which Peace has procured.

[1] This and the following papers contain an account of the steps taken by the British Government to provide a suitable constitution and policy of administration for Canada and the other recently acquired territories in North America. They furnish the basis for the Proclamation of Oct. 7th, 1763, as also for the Commission and the Instructions of the same date, given to General James Murray as Governor of the Province of Quebec. The papers are copied from the originals in the Public Record Office, and are, except where noted, from the series "America and the West Indies." The first is from vol. 268, p. 93.

His Majesty therefore, upon the same Principle of Sollicitude for the Interests of His Colonies, which engaged him in a just & necessary War, in support of their Rights, and obliged him to insist on such Terms of Peace as he thought peculiarly calculated for the future Security of that important Object, directs me to transmit to Your Lordships herewith the Definitive Treaty of Peace; and I am commanded to signify to Your Lordships His Majesty's Pleasure, that You do, without Loss of Time, take into Your most serious Consideration, those Articles which relate to the Cessions made by their Most Christian & Catholick Majesties, & that You do report Your Opinion.

By what Regulations, the most extensive Commercial Advantages may be derived from those Cessions, and

How those Advantages may be rendered most permanent & secure to His Majesty's Trading Subjects.

The Means of arriving at these desireable Ends, will perhaps be most distinctly pointed out, by considering, separately, the several Cessions stipulated by the Articles of Peace and examining the different Circumstances by which each Cession becomes more or less susceptible of the great Advantages of Commerce & Security above mentioned.

North America naturally offers itself as the principal Object of Your Lordships Consideration upon this Occasion, with regard to which, I shall first obey His Majesty's Commands in proposing to Your Lordships some general Questions, before I proceed to desire You will furnish that Information, which His Majesty expects from Your Lordships, with regard to the Northern or Southern Parts of this Continent considered separately.

The Questions which relates to North America in general, are,

1st What New Governments should be established & what Form should be adopted for such new Governments? and where the Capital, or Residence of each Governor should be fixed?

2dly What Military Establishm^t will be sufficient? What new Forts should be erected? and which, if any, may it be expedient to demolish?

3dly In what Mode least Burthensome and most palatable to the Colonies can they contribute towards the Support of the Additional Expence, which must attend their Civil & Military Establishment, upon the Arrangement which Your Lordships shall propose?

Murray's report said to be inclosed in letter of 20. July 1762. Amherst to Egremont in A & W. I. Vol. 97 but apparently missing.

Under the first of those Heads, Viz^t What new Governments shall be established? It will be proper to examine, what Priviledges are reserved to His Majesty's New Subjects by the Terms of their Capitulations; I therefore send Your Lordships herewith the Capitulation of Quebec & Montreal.

Burton's April 26, 1762 In Amherst's letter to Egremont 15 June 1762 enclosure No 20 A & W. I, Vol. 97.

It may also be a proper Object of Consideration, how far it is expedient to retain, or depart from the Forms of Government which His Most Christian Majesty had established in those Colonies; and in order to furnish Your Lordships with those Lights, which may enable You to form a just Opinion on this Head, I send herewith Copies of the several Reports of Gov^rs Murray Burton & Gage.

Gage's—Enclosure No. 38 March 20, 1762 in Amherst's to Egremont of 12 May, 1762 A. & W. I. Vol. 97.

The Second Question, which relates to the Security of North America, seems to include Two Objects to be provided for; The first is, the Security of the whole against any European Power; The next is the Preservation of the internal Peace & Tranquility of the Country against any Indian Disturbances. Of those Two Objects, the latter appears to call more immediately for such Regulations & Precautions as Your Lordships shall think proper to suggest &c^a.

Tho' in order to succeed effectually in this Point, it may become necessary to erect some Forts in the Indian Country, with their Consent, yet His Majesty's Justice & Moderation inclines Him to adopt the more eligible Method of conciliating the Minds of the Indians by the Mildness of His

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Government, by protecting their Persons & Property & securing to them all the Possessions, Rights and Priviledges they have hitherto enjoyed, & are entitled to, most cautiously guarding against any Invasion or Occupation of their Hunting Lands, the Possession of which is to be acquired by fair Purchase only; and it has been thought so highly expedient to give them the earliest and most convincing Proofs of His Majesty's Gracious and Friendly Intentions on this Head, that I have already received and transmitted the King's Commands to this Purpose to the Governors of Virginia, the Two Carolinas & Georgia, and to the Agent for Indian Affairs in the Southern Department, as Your Lordships will see fully in the inclosed Copy of my Circular Letter to them on this Subject.

Having thus executed the King's Commands, with regard to such Questions as relate to North America in general, I am to signify to Your Lordships His Majesty's further Pleasure that You do take into Consideration the following Queries, which concern some Parts of that Continent in particular.

Canada & Newfoundland.

The first and most important Object is the Fishery, with regard to which Your Lordships will furnish all the Lights you possibly can in order to shew,—

Whether the French had made any Incroachments with regard to the Fishery, contrary to what is stipulated, on this Head by the Treaty of Utrecht?

How those Incroachments may be most easily prevented by such timely Precautions, as may most effectually obviate all Disputes between the Subjects of both Crowns, in those Parts & preserve Peace & Tranquility there for the future.

What Inconvenience or Disadvantage may arise to His Majesty's Northern Colonies, or to the Fishery in those Parts, from the Vicinity of S^t Pierre & Michelon, ceded to France, under certain Restrictions by the 6^th Article of the Definitive Treaty? And by what Precautions may that Inconvenience be most effectually guarded against, either with respect to Our Fishery, or a Contraband Trade with Our Colonies.

Florida.

Can Your Lordships furnish any Lights with regard to the Climate or Soil of the Inland Parts of Florida, which tho' hitherto neglected and useless, are said to be extremely fertile?

Is there any Reason to believe that the Mouth of the Catahocke River is, or might be easily made Commodious for Shipping, or, that a Harbour may be found in the Southern Parts of the Peninsula of Florida? What particular Advantages might arise from such a Harbour, or from that of Pensacola or Mobile, or from any other, on that part of the Coast of North America lately ceded to His Majesty, which bounds the Gulph of Mexico to the North.

The general Queries with regard to North America, having taken in all the Points of Information wanted, relative to the Louisiana & the Illinois, I shall only add, that His Majesty desires to have Your Lordships Opinion whether any immediate Advantages may be derived from the free Navigation of the Mississippi, and how they are to be improved & extended?

Having thus gone thro' the several Points relative to N. America, upon which His Majesty desires to have the Opinion of Your Lordships, the obvious Application of most of the same Queries to the other Cessions made to His Majesty by the Peace, makes it unnecessary to repeat them, it will be sufficient therefore to desire that Your Lordships will report for His Majesty's Information, Your Opinion, with regard to the most effectual Means of improving and securing the Commercial Advantages, which may be derived from the Conquered Islands and from Senegal. With regard to the latter I am to inform Your Lordships, that His Majesty has thought proper to accept the Proposal of the African Committee made in the Peti-

tion of which I send You Copy inclosed, and Orders are already given to the Governor of Senegal to have a Detachment under a proper Officer to keep Possession of that Place till the African Committee shall be prepared to take Possession thereof. Your Lordships will report Your Opinion of this Arrangement, and suggest whatever may occur to You for the Advantage of this Part of the African Trade.

In Order to supply Your Lordships with all the Materials in my Office, which can in any Shape assist You, in making Your Report as ample, and as satisfactory as possible, I inclose herewith Copies of Accounts transmitted by the King's Command from Colonels Scott & Worge, as also the Capitulation of Martinico, Grenade having surrendered under the same Terms, which had been granted to that Island.

As it must require some time to examine & deliberate upon the several Points which are referred to Your Lordships in this Letter, it is the King's Pleasure, that without waiting to make a full Answer to the whole You do, as soon as possible, report your Opinion upon such Points as shall appear to you most pressing, that proper Directions mav be given, without Loss of Time, with regard to the Arrangements immediately necessary for the New Acquisitions.

I am &c.

EGREMONT[1]

endorsed: Dra^{t} to the Lords of the Trade

May 5th 1763

Letter of Reference concerning the Advantages procured by the Treaty of Peace,—the Regulations proper to be made relating to the Indians & the Establishment of New Governments in the ceded Provinces & Islands —Directing them to point out the necessary Arrangements.—

with an Inclosure

A

N° 7.—

Enclosure in letter of 5. May 1763[2]—

Definitive Treaty

Capitulation of Quebec. in B. Gen^{l} Townshend's Sept. 20. 1759

Capitulation of Montreal. in Gen^{l} Amherst's of Sep^{r} 8. 1760.

Gov^{r} Murray's Report. Quebec June 5. 1762 }
Gov^{r} Burton's Report. Trois Rivieres Apr. 1762 } transmitted by S^{r} Jeff. Amherst.
Gen^{l} Gage's Report. Montreal. March 20. 1762 }

Capitulation of Martinico. in Gen^{l} Monckton's of Feb. 9. & 27. 1762

Gov^{r} Scott's Letter. Grenada. July 7. 1762

Gov^{r} Scott's Report. Grenada. Jan^{y} 19. 1763.

Gov^{r}. Worge's Report. Senegal Jan^{y} 11. 1762.

Mem^{l} of Committee of Merchants trading to Africa, & Estimate

Circular, March 16., to Gov^{rs} of Virginia, Two Carolinas, & Georgia, & Agent for S^{o} District of Indians

endorsed: List of Papers sent to Board of Trade—May 5: 1763

Inclosure in N° 7—

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[1] Charles, Earl of Egremont succeeded Wm. Pitt as Secretary of State for the Southern Department, Oct. 9th, 1761. At this time there were two Principal Secretaries of State, one for the "Northern" and the other for the "Southern" Department, these distinctions referring to the division between them of British foreign affairs in Europe. The American Colonies came under the attention of the senior secretary, being usually the secretary for the Southern Department. In Jan. 1768, a third Secretary of State was appointed to take charge of Colonial affairs; but, with the virtual loss of the American Colonies, this office was abolished in 1782. Thereafter a new division was made into the Home and Foreign Departments. The colonies came under the care of the former department until 1801, when they were transferred to that of the Secretary for War, a new department established in 1794. From 1801 to 1854 this department was known as that of the Secretary of State for War and the Colonies.

[2] The enclosures mentioned in this list are not found with the letter of 5th May; but those relating to Canada are already given in this volume.

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Lords of Trade to Egremont, with Report :

WHITEHALL June 8. 1763.

MY LORD,—Having, in Obedience to His Majesty's Commands, signified to Us by your Lordship's Letter of the 5th of May last, prepared Our Representation upon such of the Points, thereby referr'd to Our Consideration, as appear to Us the most pressing, We beg leave to inclose Our said Representation to your Lordship, & desire you will be pleased to lay it before His Majesty.

We are
My Lord,
Your Lordship's
most Obedient and
most humble Servants
SHELBURNE
SOAME JENYNS
ED : ELIOT
Ed BACON
JOHN YORKE
GEO : RICE
ORWELL
BAMBER GASCOYNE

Earl of Egremont, One of His
Majesty's Principal Secretaries of State
endorsed : June 8th 1763.
Lords of Trade
To the Earl of Egremont
with an Inclosure
(Report on Acquisitions in America)
A N° 8.

Enclosure in letter from the Lords of Trade to Egremont, 8th June 1763.

N° 12

{L. S.} To the King's most Excellent Majesty

MAY IT PLEASE YOUR MAJESTY,

Having received Your Majesty's Commands, signified to Us by a Letter from the Earl of Egremont, dated May 5th 1763, to take into Consideration, without loss of Time, those Articles of the late Definitive Treaty of Peace, which relate to the Cessions made by France and Spain, and to report Our Opinion by what Regulations the most extensive Advantages may be derived from them, and those Advantages rendered most permanent and secure to Your Majesty's trading Subjects; And Your Majesty having further directed Us with regard to North America in general, to point out, what new Governments it may be necessary to establish, with the Form most proper for such Governments, and the Places most convenient for the Capitals; What Military Establishments will be sufficient for that Country; What new Forts it may be proper to erect, and what (if any) to demolish; And by what Mode of Revenue, least burthensome and most palatable, the Colonies can contribute to the Additional Expence of such Civil and Military Establishments: And Your Majesty having commanded that, particularly As to Canada and Newfoundland, after furnishing every Information in our Power relating to the Fishery, We should consider the

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Encroachments made by the French in this Article, contrary to the Stipulations in the Treaty of Utrecht, and give our Opinion by what Means such Encroachments may be prevented in future, and any Inconvenience which may arise from the Vicinity of S^t Pierre and Micquelon, may be most effectually guarded against.—That in respect to Florida, We should report upon it's Produce, the Situation of it's Harbours, and Rivers, with the Benefits which may arise from the free Navigation of the River Missisippi;—That in regard to the Islands conquered in the West Indies, and Senegal on the Coast of Africa, We should state the means which appear to Us most effectual for securing and improving the Commercial Advantages which may be derived from them;—But that upon the whole, it was Your Majesty's Pleasure (as some Time would be required to examine and deliberate on the several Points referred to Us) that We should, as soon as possible, report to Your Majesty Our Opinions on such of them as appear to Us most pressing, in order that Directions may be given without loss of Time:

In Obedience to Your Majesty's Commands, We have taken the several Points referred to Us into our most serious Consideration, and are of Opinion that We shall best comply with Your Majesty's Intention and Directions by stating particularly the Advantages which severally result to Your Majesty's Colonies and the Commerce of Your Subjects by the Cessions stipulated in the late Treaty, and then submitting Our humble Opinion to Your Majesty of the Means, which appear to Us immediately necessary to be put in Execution for securing and improving those Advantages.

Many of the particular Questions contained in the Reference will receive a particular Answer under one or other of those general Heads, and such as do not, We shall beg Leave, in Obedience to Your Majesty's Direction, to reserve for a future Report, when We may be better enabled to give Your Majesty Information upon such Points.

The most obvious Advantages arising from the Cessions made by the Definitive Treaty are, The exclusive Fishery of the River S^t Laurence on all the Coasts in the Gulph of S^t Laurence and all the Islands in that Gulph. From all these Fisheries Your Majesty's Subjects were hitherto entirely excluded; partly by the express Stipulations of the Treaty of Utrecht by which Cape Breton, S^t Johns and the other Islands in the Gulph were dismember'd from Nova Scotia and ceded to France, partly by the Claim immediately set up by France to the whole Southern Shore of the Gulph under pretence that it had never made a part of Nova Scotia, but had always been considered as a seperate District of New France. In consequence of this Claim and of the Possession instantly taken of that Territory by the French, which till the late War they were permitted to retain, they established their most Valuable Fisheries in the different and most convenient Bays of that Country, as well in respect to Catching and Curing of Fish and fitting out Boats, Shallops and other Vessels, as to raising Provisions at the cheapest Rates. From all these Circumstances this Fishery upon the Coasts of the Gulph and of the Islands in the Gulph of S^t Laurence, well known by the Name of La Peche Sedentaire, has ever since been deemed one of the most valuable parts of the French Fishery, and We have reason to conclude from the Spirit and Industry which Your Majesty's Subjects have shewn ever since the Reduction of Louisbourg that it will become equally valuable in their Hands, especially when We consider that, the Fishery of the River S^t Laurence consisting of Whales, Seals, Sea-Cows &ca has been in the short Period since the taking of Quebec, carried to a much greater Extent by your Majesty's Subjects, than ever it was by the French, during their Possession of Canada

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This Claim, and the Possession in consequence of it, of the whole Southern Coast of the Gulph of S^t Laurence, from the Streights of Canceau to Cape Roziere, at the Mouth of the River, appears to Us to have been the cheif Encroachment made by the French in Violation of the Stipulations in the Treaty of Utrecht; But the Monopoly of the Fishery which they endeavoured to establish upon this Encroachment was greatly strengthned, by other Circumstances. By suffering the whole of Nova Scotia (the Fort of Annapolis excepted) to remain entirely in the Possession of French Inhabitants from the Treaty of Utrecht to the Year 1749, Your Majesty's Subjects were discouraged and prevented from availing themselves of the advantageous and abundant Fishery which might have been carried on upon that part of the Coast of Nova Scotia expressly and exclusively reserved to them in the Treaty of Utrecht, for the french constantly excited the Indians to disturb the Fishermen that resorted thither; And by their Possession of the whole Coast of Labrador, they not only carried on an extensive Trade with the Esquimeaux Indians in Oyl, Furs &ca (in which they allowed Your Majesty's Subjects no Share) but by the Vicinity of the Eastern Part of that Coast, to that part of Newfoundland, (where a permissive Right of drying their Fish, only during the Fishery Season was granted by the Treaty of Utrecht) They assumed in some Measure an Exclusive Right to the Navigation in the Streights of Bellisle.

These several Encroachments, will, We apprehend, entirely cease, on the one Hand, by the compleat Settlement of Your Majesty's Colony of Nova Scotia, according to it's true and ancient Boundaries, and on the other by the Annexation of the Labrador Coast to the Government of Newfoundland, and by the faithfull Execution of those Instructions, which Your Majesty has been pleased to give to Your Governor of that Island. With respect to the Islands of S^t Pierre and Miquelon, We do not apprehend that any great Advantages can result to the French Fishery, or great Inconvenience to that of Your Majesty's Subjects by the Possession of them according to the Terms of the Treaty; We do not imagine they are fitted to restore or revive that Branch which the French call La Peche Sedentaire, and of which they have been deprived by the Cessions, not only as these Islands are without Wood, either for Firing or for any sort of Naval Construction, but as they are utterly incapable of producing Provision sufficient for the Consumption of any considerable Number of Inhabitants. And as to any Conveniences of Drying and Curing such Fish upon those Islands, as may be caught upon the Banks of Newfoundland during the Banking Season, It appears, by what Information We have had, that the best Fish so caught may be earlier and more conveniently dryed upon that part of Newfoundland, where a permissive Right for so doing during the Season was granted as well by the Treaty of Utrecht, as by the late Treaty. It seems, therefore, only to remain, that proper Precautions be taken against any Contraband Trade, which may be carried on from those Islands by any of the Ships of Your Majesty's Subjects trading thither or otherwise. To prevent which Your Majesty's Governor of Newfoundland should be instructed to employ the utmost Vigilance with regard to all such Trade during his Continuance upon the Station, and to give express Directions to the Officers of the Garrisons and the Magistrates in their several Departments that in his Absence they should have the utmost Attention to this Object, and to put the Laws against contraband Trade into strict Execution, for which purpose it will be necessary to establish in that Government a Court of Vice Admiralty or some other Jurisdiction competent to the Cognizance and Punishment of Breaches of the Acts of Trade.

The next obvious Benefit acquired by the Cessions made to your Majesty is the Fur & Skin Trade of all the Indians in North America. The first

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of these Articles before the present Cession, was enjoyed by the French almost entirely; The only part left in the Hands of Your Majesty's Subjects, being that carried on by the Exclusive Company of Hudson's Bay, and a very inconsiderable Quantity through the Province of New York. This Trade was acquired in virtue of the Possession which they had taken (contrary to the Stipulations of the Treaty of Utrecht) of all the Lakes in North America, communicating with the River S^t Laurence, tho' the circumjacent Territory avowedly belonged to the six Nations of Indians, Acknowledged by the French to be Your Majesty's Subjects in that Treaty, and by virtue of the Claim which they afterwards set up and were suffered to maintain for a long time of forcibly excluding Your Majesty's Subjects from any Navigation in those Lakes. But this Trade which the French with the utmost Industry had carried to the greatest Extent, by means of numerous well chosen Posts and Forts sufficient, as well to overawe as to supply all the Indians upon that immense Continent, is now fallen intirely and exclusively into the Hands of Your Majesty's Subjects and may be secured and communicated to all Your Majestys Colonies according to the Industry of each, by means of those Posts and Forts with proper Regulations for the Trade with the Indians, under the Protection of such a Military Force as may preserve their Tranquility, not only against Indian Incursions but be ready for their Defence against any European Attack.—The Skin Trade was Chiefly in the Hands of Your Majesty's Subjects in the Southern Colonies even previous to the Cessions, but was often disturbed and interrupted by the frequent Incursions of Indians incited by the French—As these Circumstances no longer exist, a great Extension and Improvement of that Article may likewise be expected.

Another obvious Advantage of the Cession, will be the supplying of all the Indian Tribes upon the Continent of North America with European Commodities immediately through the Hands of English Traders.—This Article, if not wholly engrossed by the French, was possessed by them in the greatest Degree, and was of so much Importance that the Traders of New York chose rather to supply the Inhabitants of Canada with English Goods and Manufactures fit for the Indian Trade, than to risque the Loss of what they esteemed so valuable a Branch, by attempting a direct Trade, with the Indians themselves. And this strange Principle was adopted by many of the Merchants of London, as appeared upon a Hearing on that Subject before Your Majesty's Board of Trade in 1721.

Another Advantage attending the late Treaty is the secure settling of the whole Coast of North America, as it's produce may invite, or Convenience for Settlement may offer, from the Mouth of the Missisippi to the Boundaries of the Hudson's Bay Settlements, with the whole Variety of Produce which is capable of being raised in that immense Tract of Sea Coast, either by the Industry of Emigrants from Europe, or from the Overflowing of Your Majesty's ancient Colonies—previous to the late War, Nothing is more certain than that many of Your Majesty's ancient Colonies appeared to be overstock'd with Inhabitants, occasioned partly from an extremely increasing Population in some of those Colonies, whose Boundaries had become too narrow for their Numbers, but chiefly by the Monopoly of Lands in the Hands of Land Jobbers from the extravagant and injudicious Grants made by some of Your Majesty's Governors, whereby a great many of Your Majesty's industrious Subjects were either forced into Manufactures, being excluded from planting by the high Price of Land (A Situation which they otherwise would have preferr'd) or forced to emigrate to the other Side of the Mountains, where they were exposed to the Irruptions of the Indians as well as the Hostilities of the French. And though, on the one Hand, Your Majesty's Province of Nova Scotia according to it's true and just Boundaries, and on the other, that of Georgia, would

have contained many more of Your Majesty's Subjects than were in this disagreable Situation, and more advantageously for the Trade and Interest of Your Kingdoms, Yet the Hostilities which the French contrived to excite at first, by the Indians in their Alliance, and at last by regular Troops in Nova Scotia, and a Dread of the like Calamities on the Side of Georgia from the Indians and Spaniards, have hitherto prevented the salutary progress of these new Settlements, and the happy Consequences which otherwise might have been expected from them.

We have already mentioned the great Scope and Room which there is for beneficial Settlements in the Article of Fishery in Nova Scotia, another great Advantage however of the late Treaty, producing Strength to Your Kingdom and Riches to Your Subjects, is the future Supply which the new Acquisitions will afford of Naval Stores, more particularly that of masting for the Royal Navy, and of that Species of Timber and Wood commonly called Lumber, so essential to the Commerce and Cultivation of the Sugar Colonies, both which Articles are to be found in great Quantities, and with peculiar Advantage and Convenience in the Province of Canada, upon Lake Champlain, and in those Parts of Nova Scotia, the exclusive Possession of which is now confirmed to Your Majesty, and this Benefit arising from the Treaty is of the greatest Consideration, as the Supply of Masting and Stores for the Royal Navy from America had been almost entirely stop'd by bad Management and Waste committed in Your Majesty's Woods in New England and New York and the Price of Lumber had been greatly enhanced from the Necessity of procuring it at a greater Distance from the Ocean, and from convenient Ports of Shipping.

In the Province of Georgia and the Neighbouring Florida Commercial Advantages of a still more valuable Nature will probably follow the secure Extension of Settlement, which will be attained by the Cession of Florida, and the End which will be thereby put to Interruptions from the Indians. For there can be no Doubt, that Indigo, Silk, Cotton, and many of the Commodities now found in the West Indies only, may be raised in these Climates. An Object which will prove a strong Temptation to the Settlement of those Territories.

A capital Advantage highly deserving Your Majesty's Attention is the Increase of the Trade of Sugar, Coffee, Cotton and other Indian Products by the speedy Settlement and Culture of the new acquired Islands.—It is a known Truth, that the Produce of our West India Islands has hitherto been but barely sufficient to answer our growing Consumption in the first of these valuable Articles, and that as these Islands were all, excepting Jamaica, intirely cultivated, additional Territory was therefore become absolutely necessary to this Branch of Trade, which may be extended to a very great Degree if those new Islands are speedily settled.

The last advantageous Consequence arising from the Cessions which We shall now lay before Your Majesty is that of securing the whole Gum Trade on the Coast of Africa from a Monopoly in the Hands of the French by means of the River Senegal as well as the Acquisition of a considerable Share of the Slave Trade formerly in their hands, with a Variety of other Articles which there is great reason to believe may be obtained by the prosecution of further Discoveries on that River.

Having thus stated the most obvious Advantages resulting from the Cession made to Your Majesty by the late definitive Treaty, We submit to Your Majesty, as Our humble Opinion, that they can only be secured and improved by an immediate Establishment of regular Governments, in all such Places, where planting and Settlement, as well as Trade and Commerce are the immediate Objects. For in order to invite new Settlers to risque their persons and Property in taking up new Lands, as well as to secure the old Inhabitants in the Enjoyment of those Rights and Priviledges

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reserved to them by the Treaty, such regular Government appears, both from Reason and Experience, of absolute Necessity. And it seems likewise necessary for the same reasons, as well as to secure Your Majesty's Sovereignty and the Publick Tranquillity, that a large Military force should be kept up in each Government, 'till by the increase of Inhabitants, each Colony shall be enabled to maintain their own Governments by their own internal Force. But as no such regular civil Government is either necessary or indeed can be established, where no perpetual Residence or planting is intended; It will there be sufficient to provide for the free Trade of all Your Majesty's Subjects under such Regulations, and such Administration of Justice as is best suited to that End. Such We apprehend to be the case of Newfoundland, where a temporary Fishery is the only Object, and this We suppose has been the reason, which induced Your Majesty to annex the Coast of Labrador to that Government: Such is the case of Senegal and the Principle upon which we suppose Your Majesty thought proper to put that River and Country under the Administration of the African Committee. And such we apprehend will be the Case of that Territory in North America which in Your Majesty's Justice and Humanity as well as sound Policy is proposed to be left, under Your Majesty's immediate Protection, to the Indian Tribes for their hunting Grounds; where no Settlement by planting is intended, immediately at least, to be attempted; and consequently where no particular form of Civil Government can be established. In such Territory we should propose, that a free Trade with the Indian Tribes should be granted to all Your Majesty's Colonies and Subjects under such Regulations as shall be judged most proper for that End, and under the protection of such Military Force, to be kept up in the different Posts & Forts in the Indian Country as may be judged necessary, as well for the Protection of Trade and the good Treatment of the Indians as the Maintenance of Your Majesty's Sovereignty and the general defence of North America.

We shall defer at present entering into any particulars, as to the number of Troops which it may be necessary to maintain for this purpose, The Number and Situation of the Posts and Forts, and the Regulations proper to be established for a free Trade from all Your Majesty's Colonies into the Indian Country; 'till by further Information from Your Majesty's Commander in Chief of America, and from Your Majesty's Agents for Indian Affairs, We shall be enabled to make a more full and particular Report upon so interesting and important a Subject. And We apprehend that no such Delay can be attended with very material Inconvenience, since, if Your Majesty shall be pleased to adopt the general proposition of leaving a large Tract of Country round the great Lakes as an Indian Country, open to Trade, but not to Grants and Settlements, the Limits of such Territory will be sufficiently ascertained by the Bounds to be given to the Governors of Canada and Florida on the North and South, and the Mississippi on the West; and by the strict Directions to be given to Your Majesty's several Governors of Your ancient Colonies for preventing their making any new Grants of Lands beyond certain fixed Limits to be laid down in the Instructions for that purpose. And We apprehend that in the mean time the Security of this Trade will be sufficiently provided for by the Forts already erected, and such Garrisons as Your Commander in Chief may, at his Discretion, think proper to keep in them.

But that no time may be lost in finally settling this important point of the Indian Country, it will be absolutely necessary that immediate Orders be sent as well to Your Majesty's Commander in Chief of America as to Your Agents for Indian Affairs, that without delay they furnish every Information in their power on this Subject, and that they be directed to correspond directly with Your Majesty's Board of Trade for this purpose.

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

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Canada, Florida and the new acquired Islands in the West Indies appear to Us to be the Places where Planting, perpetual Settlement and Cultivation ought to be encouraged and consequently where regular Forms of Government must immediately be established.

Canada as possessed and claimed by the French consisted of an immense Tract of Country including as well the whole Lands to the westward indefinitely which was the Subject of their Indian Trade, as all that Country from the Southern Bank of the River S^t Lawrence where they carried on their Encroachments.

It is needless to state with any degree of precision the Bounds and Limits of this extensive Country, for We should humbly propose to Your Majesty that the new Government of Canada should be restricted, so as to leave on the one hand, all the Lands lying about the great Lakes and beyond the Sources of the Rivers which fall into the River S^t Lawrence from the North, to be thrown into the Indian Country, and on the other hand, all the Lands from Cape Roziere to Lake Champlain, along the Heights where the Sources of the Rivers rise, which fall into the Bay of Fundy and Atlantic Ocean, to be annexed to Nova Scotia and New England in such a manner as upon any future directions after particular Surveys have been made shall appear most proper, If this general Idea shall be approved the future Bounds of the new Colony of Canada will be as follows,

On the South East it will be bounded by the high Lands which range across the Continent from Cape Roziere in the Gulph of S^t Laurence to that point of Lake Champlain above S^t Johns which is in Latitude 45 Degrees North; which high Lands separate the heads of the Rivers which fall into the great River S^t Lawrence from the heads of those which fall into the Atlantick Ocean or Bay of Fundy. On the North West It will be bounded by a Line drawn South from the River S^t Johns in Labrador by the heads of those Rivers which fall into the River S^t Lawrence as far as the East end of Lake Nipissin upon the Ottowa River, and on the South West by a Line drawn due West to the River S^t Lawrence from that point on Lake Champlain which is directly opposite to where the South Line falls in and so cross the said River S^t Lawrence and pursuing a North West Course along the Heights where the Rivers rise, that fall into the Ottowa River, to be continued to the East end of Nipissin Lake where the North Line terminates.

In order however that Your Majesty may judge with the greater precision of the Limits of Canada as above described and also of those We shall propose for Florida, and of the Country we think right to be left as Indian Territory, We humbly beg leave to refer to the annex'd Chart[1] in which those Limits are particularly delineated, and of which Your Majesty will have a clearer Conception than can be conveyed by descriptive Words alone.

The Advantage resulting from this restriction of the Colony of Canada will be that of preventing by proper and natural Boundaries, as well the Ancient French Inhabitants as others from removing & settling in remote Places, where they neither could be so conveniently made ameanable to the Jurisdiction of any Colony nor made subservient to the Interest of the Trade & Commerce of this Kingdom by an easy Communication with & Vicinity to the great River S^t Lawrence. And this Division by the heights of Land to the South of the River S^t Lawrence will on the one hand leave all Your Majesty's new French Subjects under such Government, as Your Majesty shall think proper to continue to them in regard to the Rights & Usages already secured or that may be granted to them. On the other hand, the reannexing to Nova Scotia all that Tract of Land from Cape Roziere along the Gulph of S^t Lawrence with the whole Coast of the

[1] The Report was accompanied by a printed map of North America by Eman. Bowen, Geographer to His Majesty, and engraved by John Gibson, on which the boundaries were marked.

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Bay of Fundy to the River Penobscot, or to the River S^t Croix will be attended with this peculiar Advantage, of leaving so extensive a Line of Sea Coast to be settled by British Subjects; and all the new Settlers upon this Tract of Land will with greater facility be made amenable to the Jurisdiction of Nova Scotia than to that of Canada; and upon the same Principle, It will likewise be necessary to reannex the Islands of Cape Breton and S^t John's to the Government of Nova Scotia.[1]

And here, We cannot help offering it as Our humble Opinion that the utmost Attention should immediately be given to the Speedy Settlement of this Tract of Country and that Instructions be prepared for Your Majesty's Governor for that purpose, with particular regard to such Officers & Soldiers who have served so faithfully & bravely during the late War and who may now be willing to undertake such new Settlements under proper Conditions.

It is obvious that the new Government of Canada, thus bounded, will, according to the Reports of Generals Gage, Murray and Burton, contain within it a very great number of French Inhabitants and Settlements, and that the Number of such Inhabitants must greatly exceed, for a very long period of time, that of Your Majesty's British and other Subjects who may attempt Settlements, even supposing the utmost Efforts of Industry on their part either in making new Settlements, by clearing of Lands, or purchasing old ones from the ancient Inhabitants, From which Circumstances, it appears to Us that the Chief Objects of any new Form of Government to be erected in that Country ought to be to secure the ancient Inhabitants in all the Titles, Rights and Privileges granted to them by Treaty, and to increase as much as possible the Number of British and other new Protestant Settlers, which Objects We apprehend will be best obtain'd by the Appointment of a Governor and Council under Your Majesty's immediate Commission & Instructions. But the particular Regulations and Provisions to be adapted to the different Circumstances and Situation of this as well as Your Majesty's other new Acquisitions, will more properly and distinctly come under Your Majesty's Consideration in the Draught of the Commission and Instructions to be prepared for each Governor, than in this first general Report.

It will however be necessary that a large military Force be kept up 'till the number of British Inhabitants and new Settlers be very considerably increased, as well to secure the Obedience and Fidelity of the ancient French Inhabitants as to give full Protection & Security to the new British Settlers.

Canada was, under the French, divided into the three Governments of Quebec, Montreal and Trois Rivieres, but the Residence of the chief Governor was at Quebec, and the two other Governments had each a Lieutenant Governor only, subordinate to the Governor in Chief, and we should humbly propose that the same Method be continued under the new Governm^t; not only as by this means the Administration of Justice and of Commerce will be less embarrass'd, but that a less proportion of military Force will be requisite to be maintained and be more easily applicable against all external or internal Disturbances.

Florida and that part of Louisiana to the eastward of the Missisippi, both which Tracts are ceded to Your Majesty by the late Treaty, may be compared to Canada, in respect to Extent of Territory, and the number of Indian Tribes, with which they have immediate Communication, but in other respects, they seem entirely different. The number of settled Inhabitants, either French or Spaniards, we apprehend, has never been

[1] It will be observed that Nova Scotia, or Acadia, still included the territory afterwards erected into the separate Province of New Brunswick. The island of St. Johns, here mentioned, is now Prince Edward Island.

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considerable, and there is little probability, from the Facility of their Removal, that any of them will remain, after the Cessions are compleated, tho' we are of Opinion, as well from this Circumstance of their Paucity, as with a view to the immediate Settlement of the Country, that every Expedient should be used, to induce as many to remain as can be prevailed upon.—

The Produce of Canada, with its Trade, the Navigation of the River S^t Lawrence, with its Communication to the great Lakes of North America, are, from authentick Information, in many particulars tolerably well understood; but we are sorry it is not in our power, either from any materials in our Office, or from any other to be depended upon, to give Your Majesty that certain Information we could wish either with regard to the Coast, Harbours and Rivers of Florida, or as to the Variety of Produce which there is the greatest probability may be raised in that extended Country. We shall therefore content ourselves with suggesting at present, that whenever a Government is established in this Country, Instructions should be given for surveying with all possible Accuracy, as well the Sea Coast and places fit for Harbours as the internal Country and Rivers, particularly of that part which lies between the great Mountains and the Missisippi, of which there are not extant any Charts or Accounts on which we can depend, for which purpose it will be necessary that a proper number of able and skilfull Surveyors be appointed.

The great Tract of Sea Coast from S^t Augustine, round Cape Florida, along the Gulph of Mexico, to the Mouth of the Missisippi makes it, we apprehend, indispenseably necessary that this Country should be divided into two distinct Governments, and, for the present, the Chief Residence of the Governor of the one should be at S^t Augustine, with orders to give particular Attention to Cape Florida, (as that Cape commands the whole Navigation from the Bay of Mexico) the Residence of the other at Pensicola, with particular Instructions regarding the Missisippi, the free Navigation of which ought, we apprehend, to be most accurately understood, not only in respect of that River being the future Boundary betwixt Your Majesty's Dominions, and those of the French, but as this River by its Communication with the Ohio, the Illinoris &c^a is of the utmost Importance to all Connection with the Indian Nations and the only Outlet to the great internal Trade, which may be carried on amongst them.

If it shall be thought proper to divide Florida into two distinct Governments, they may be distinguished by the names of East and West Florida and may be bounded as follows,

East Florida to be bounded by the Coast of the Atlantick Sea from Cape Florida to the North Entrance of S^t John's River, on the East; by a Line drawn due West from the North Entrance of S^t John's River to the Catahowche or Flint Rivers, on the North; and on the West and South West by that part of the Coast of the Gulph of Mexico, which extends from Cape Florida to the Mouth of the Catahowche River, and from thence following the Course of the said Rivers to where the North Line falls in.

West Florida to comprehend all the Sea Coast of the Gulph of Mexico, extending West from the Catahowche River or Flint River towards the Missisippi, as far as Your Majesty's Territories extend, and stretching up into the Land as far as the 31^st Degree of North Latitude, which, We humbly apprehend, is as far North as the Settlements can be carried, without interfering with Lands claimed or occupied by the Indians.

By this Plan of Division, which is formed with a view to make the two Colonies as distinct as possible, by establishing a natural Line of Separation between them, and by giving to each a due proportion of the natural Advantages and Conveniencies of Commerce and Navigation, a large Tract

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of Land lying between the North Boundary Line of East Florida and the River Alatamaha, the present South Boundary of Georgia, which has hitherto been unoccupied, as to any permanent Settlement, either by Your Majesty's Subjects or those of Spain, remains to be put under some proper Establishment: and we think it cannot in any respect be better disposed of, than by putting it under the Jurisdiction and within the Government of Georgia, By this means the principal Obstacles, which have hitherto impeded the Progress of that advantageous and well regulated Colony, will be removed, and its Settlements extended to the great Benefit and Advantage of the Mother Country.

With respect to the Form of each of these Governments, We are of Opinion, that in regard to their being Infant Settlements the most suitable will be that of a Governor and Council, by Your Majesty's Commission, with Instructions adapted to the most quick and speedy Settlement of these Countries. But a considerable military Force must be likewise kept up in these Governments, as well in respect to the neighbourhood of the French and Indians, as to the Security of the Settlers, till their numbers enable them to have Security by their own internal Force.

The chief Object of the new acquired Islands in the West Indies, being that of extending West Indian Products of all kinds, as quickly as possible, to the Benefit of the Trade of Your Majesty's Kingdoms; And such Extention being impossible to be obtain'd but by the means of a very large Capital immediately to be laid out by Settlers in the Purchase of Negroes and Erection of Buildings, it is obvious that Security in this is more peculiarly to be attended to, and that as all those Islands, the Grenadaes excepted, which are inhabited by French, are almost entirely uncleared and uncultivated, It is equally obvious, that this Security cannot be obtained for some time at least but by the means of regular Troops—and We are clearly of opinion that this is so necessary, that We do not believe any Persons of sufficient Stock will be found willing to hazard the Capital necessary for a Sugar Plantation in any of these Islands without it.—The next Circumstance necessary to the Establishment of general Security is that of the regular Administration of Justice under a civil Government, the only Form of which that can be adapted to the present Situation of these Islands is, We apprehend, by a Governor and Council, under Your Majesty's immediate Appointment. But all particulars relative to it will best come under Your Majesty's Consideration, when We receive Your Orders to prepare the Commission and Instructions for the Governor.

We are of Opinion that the erecting all these Islands into one general Government, with a subordinate Lieutenant Governor in each, as is now practised in the Leeward Islands, will be better adapted, as well to the purposes of Civil Government as to the Application of military Power to the Protection of the whole, than either the separating of them into distinct Governments, or leaving those of S^t Vincent, Dominico and Tobago under the Commission of the Governor of Barbadoes.—For, by this means, the military Force will be best applied to the general Security, especially if their relative Situation be such as we are inform'd it is, that there is an easy Communication from y^e one to the other, even of those which appear to be most remote.—Their being subject to one Government for the present will likewise contribute best to the carrying most speedily into Execution those Instructions, which will be necessary, as well for surveying those Lands as for dividing them into Lotts proper for Sugar Plantations or other Products, and for granting such Lotts to such Persons as shall be willing to undertake the Settlement of them, either upon Sale, Lease or gratuitous Grants as Your Majesty shall think most proper to direct.—By this Disposition not only Your Majesty's Orders will go thro' the Channel of one Person, but one Person will be responsible for the due Execution of them.

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Having thus given our humble opinion in general as to the Government, which it may be necessary for Your Majesty to establish in Canada, Florida and the West Indies, We should now conclude this point, reserving all other particulars relative to it to be offer'd to Your Majesty's Consideration in the Draughts of y^e Commissions and Instructions for the respective Governors, which must necessarily be prepared, if Your Majesty shall approve the general Proposition, but our Duty and the Experience of our Office, as well as the Authority of our Predecessors, oblige Us on this Occasion to make one other general Observation, which We humbly submit to Your Majesty.

That if all the Governors of Your Majesty's Colonies are not for the future obliged to constant Residence, as well as all subordinate Officers whatsoever, particularly in these new Governments, and appointed in such manner as to be removeable at Your Majesty's Pleasure there will be no proper Security either for the due Execution of their Offices upon the spot, or for their furnishing in a regular and punctual manner such Information to Your Majesty's Boards and Offices in this Kingdom, as is absolutely necessary for Your Majesty's Service, and for the Security and Improvement of Your old as well as new Colonies; and, We apprehend, it was upon a Conviction of this Truth, that when the Governments of Georgia and Nova Scotia were lately erected, all the new Officers then created, were appointed in this manner.[1]

It now only remains that, in Obedience to Your Majesty's Commands, We should give our Opinions upon the mode of Revenue least burthensome and most palatable to the Colonies, whereby they can contribute to the additional Expence, which must attend the Civil and Military Establishments adopted on the present Occasion, but on this point of the highest Importance, it is intirely out of our Power to form any Opinion, which We could presume to offer for Your Majesty's Consideration, as most of the Materials necessary to form a just and accurate Judgement upon it, are not within the reach of our Office. Such as can be procured shall be collected with all possible Dispatch, and shall at any time be laid before Your Majesty, in such manner as You shall please to direct.

All which is most humbly submitted,

SHELBURNE
SOAME JENYNS.
ED: ELIOT
E^d BACON
JOHN YORKE
GEO: RICE
ORWELL
BAMBER GASCOYNE

Whitehall
June 8^th 1763

[1] Referring to the custom which had grown up, and which was the occasion of much complaint in the American Colonies, of granting to Court favourites and others lucrative offices in the colonies, the claims to which were treated as proprietary rights, but the duties of which were sometimes neglected altogether, or were discharged by inferior and poorly paid deputies sent out by the patentees. See Instructions to Governor Murray, sec. 24. See p. 136.

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Egremont to the Lords of Trade.[1]

WHITEHALL July 14th 1763.

Lords of Trade

MY LORDS,—Your Report, dated the 8th of last Month, having been laid before the King, and His Majesty having taken the Same into Consideration; I am, in Consequence thereof, to acquaint your Lordships, That the King approves the Erecting Three New Governments in No America, under the Denominations, your Lordships propose, of Canada, East Florida, and West Florida; But, with regard to the Limits of these Governments, as described in the Report, and marked out in the Chart thereunto annexed; Altho' His Majesty entirely concurs in your Lordships Idea, of not permitting any Grant of Lands, or New Settlements to be made, for the present, beyond the Bounds proposed by your Lordships; Yet the King thinks, that great Inconveniences might arise, from so large a Tract of Land being left, without being Subject to the Civil Jurisdiction of some Governor, in Virtue of His Majesty's Commission, under the Great Seal of Great Britain; And that, (besides the Difficulties there might be, for Want of such a Civil Jurisdiction, in bringing to Justice Criminals, & Fugitives, who may take Refuge in that Country,) Their not being included within some established Government might, in Time to come, furnish Matter of Dispute, with Regard to the Property; And other Powers, who might hereafter find Means of Access to those Countries, might take Possession thereof, as derelict Lands: The King therefore is of Opinion, that, in the Commission for the Governor of Canada, all the Lakes, vizt, Ontario, Erie, Huron, Michigan, and Superior, should be included, with all the Country, as far North, & West, as the Limits of the Hudsons Bay Company, and the Mississippi; And also that all Lands whatsoever, ceded by the late Treaty, and which are not already included within the Limits of His Majesty's ancient Colonies, or intended to form the Governments of East and West Florida, as described in your Lordships Report, be assigned to the Government of Canada, unless your Lordships should suggest any other Distribution, which might answer the purpose more effectually; On which Matter your Lordships will lose no Time in making a Report to His Majesty.[2]

Having thus informed your Lordships of the King's Intentions, with regard to the Extent of the New Governments to be erected in North America; I am now to repeat to you, That His Majesty entirely concurs in your Lordships Idea, of not permitting, for the present, any Grant of Lands, or New Settlements, beyond the Bounds proposed in your Report; And that all the Countries, beyond such Bounds, be also, for the present, left unsettled, for the Indian Tribes to hunt in; but open to a free Trade for all the Colonies: And the King would have the Instructions to the Three New Governors in North America, formed so, as to contain the strongest Injunctions and Restrictions for this Purpose:—And His Majesty having been pleased to appoint The Honble James Murray to be Governor of Canada; Francis Grant Esqr to be Governor of East Florida; and George Johnstone Esqr to be Governor of West Florida; I am to signify to your Lordships, the King's Pleasure, that you do, forthwith, prepare, to be laid before His Majesty for His Approbation, Draughts of Commissions, and Instructions, for the said Three Governors, agreable to the King's Intentions communicated to you in this Letter, and to the Form of Government, proposed by your Lordships, of a Governor and Council by the King's Commission; Adapting the Instructions to the different Circumstances and Situation of the respective Countries; And your Lordships will insert an Instruction to the said Governors of Canada, and of East and West Florida, to cause accurate Surveys to be made, of the Countries under their Government.

With regard to the ancient Colonies; I am to acquaint your Lordships, that the King approves the extending the Limits of Georgia in the Manner you suggest; as also

[1] A. and W. I., vol. 268, p. 205.

[2] The reasons for not following the plan suggested are given in the reply of the Lords of Trade, of Aug. 5th, which follows this letter.

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the Additions, your Lordships propose to be made, to Nova Scotia; and, in Case such Addition to Georgia, and Nova Scotia, shall make it necessary to issue New Commissions to any of the present Governors in N° America, your Lordships will prepare Draughts thereof, for the King's Approbation: And your Lordships will also prepare Draughts of such Instructions, as shall be necessary, for the several Governors of the ancient Colonies, for preventing their making any New Grants of Lands, beyond certain fixed Limits to be therein laid down for that purpose; And in these Instructions, as well as in Those for the New Governors, your Lordships will insert a Clause directing most particular Regard to be had, in the granting of any Lands, to such Officers and Soldiers, more especially Those residing in America, who have served so faithfully, and bravely, during the War, and who may now be willing to undertake any New Settlements under proper Conditions.

His Majesty thinks it highly proper, that the Agents for Indian Affairs should correspond with your Lordships, in regard to the Indian Country, and should transmit such Information on this Subject, as your Lordships shall require from them; for which purpose you will send them the necessary Orders and Instructions; But, with regard to the Commander in Chief of His Majesty's Forces, the King thinks, that His Correspondence should remain, as it has hitherto done, with the Secretary of State; who will not fail to communicate to your Lordships all such Informations, & Lights, as he shall, from time to time, furnish, relative to the State of the new Acquisitions in America; And as soon as your Lordships shall be able, from such Information, to make a more full and particular Report, as to the Number of Troops necessary to be maintained in the several Governments, and Posts, in America; and that the King shall have taken His Resolution thereupon; the Secretary of State will signify the same to the Commander in Chief: And, in the mean Time, I shall acquaint him, with your Lordships general Idea, that a large Military Force should be kept up in the New Governments; and such Garrisons, as he shall, in his Discretion, think proper, in the Forts already erected, and proposed to be kept up, for the Security of the Indian Trade.

Having now gone thro' the several Points, relative to North America, I come to the new acquired Islands in the West Indies; On which Subject I have only to inform your Lordships, that the King approves your Proposal of Erecting all These Islands, viz^t Grenada and the Grenadines; S^t. Vincent; Dominico; and Tobago; into one general Government; with a subordinate Lieutenant Governor in Each, as is now practiced in the Leeward Islands, under the same Form of Civil Government by a Governor and Council:—And His Majesty having been pleased to appoint Robert Melvill Esq. to be Governor of the said Islands; Your Lordships will prepare, to be laid before the King for His Approbation, the Draught of a Commission, and Instructions, for the said Gentleman, adapted to the Situation & Circumstances of the same: But as the Islands of S^t Vincent, Dominico, & Tabago, as well as S^t Lucia, ceded to France by the Definitive Treaty, are all included, by Name, in the Commission of the Governor of Barbados; your Lordships will consider, whether it may not be necessary to dismember the said Islands from that Government, by a New Commission to the Governor, or by some other legal Method.

It is farther His Majesty's Pleasure, that your Lordships should forthwith take into your Consideration, and report, what Methods shall appear, to you, the most reasonable, and also the most frugal, for the peopling, and settling, the New Governments, with useful and industrious Inhabitants, either from such of His Majesty's Colonies, That may be overstocked with Inhabitants, or from any Foreign Parts.

I am &c

EGREMONT

endorsed: Dra^t. to the Lords of Trade.

July 14^th 1763.

Letter of Reference concerning the Extent & Settlement of the new Governments. All the Indian Country ought to be included under some civil Jurisdiction, tho' no Grants of Lands or Settlements to be permitted beyond certain Limits—And concerning Commissions & Instructions to be prepared for the New Governors.—

No. 9 A.

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Lords of Trade to Egremont.[1]

WHITEHALL
August 5^{th} 1763

MY LORD,—Having prepared an humble Representation to His Majesty upon that part of Your Lordship's Letter of the 14^{th} of July last which acquaint us with His Majesty's Pleasure that all the Country therein describ'd should be assign'd to the Government of Canada, unless we should suggest some other Distribution which might more effectually answer His Majesty's Intention with respect to those Lands, We beg Leave to inclose to Your Lordship our said Representation desiring you will be pleased to lay it before His Majesty—

We are My Lord Your Lordship's
Most obedient and most humble Servants,

ORWELL — SHELBURNE
BAMBER GASCOYNE — ED: ELIOT
GEO: RICE

Earl of EGREMONT one of His Majesties Principal Secrys of State.
Endorsed: Aug^{t} 5^{th} 1763 R 6^{th}
Lords of Trade
with an Inclosure.

To The King's Most Excellent Majesty.

MAY IT PLEASE YOUR MAJESTY.

In Obedience to Your Majesty's Commands contained in a Letter from the Earl of Egremont, dated the 14^{th} of July last signifying to Us Your Majesty's most gracious Approbation of Our Idea, that that large Tract of Country bounded by the Mississippi and the Limits of the Hudson Bay Company on the one hand and on the other by the Limits of Canada, East and West Florida and His Majesty's ancient Colonies, should for the present be made subject to no grants of Lands nor to any Settlements. But acquainting us, that it was Your Majesty's Pleasure, that it should be put under some civil Jurisdiction, by a Commission under the Great Seal of Great Britain, so as to prevent any Objection, which might be formed, as to the Property of it, or its being considered as abandoned or direlict, or it's becoming a refuge for Criminals and Fugitives, and for these Reasons, that the whole of this Territory should be inserted in the Commission of the Governor of Canada, and assigned to that Government, unless we should suggest to Your Majesty some disposition which would answer these Purposes more effectually and directing us on this Matter to lose no time to report to Your Majesty.

We have taken this important Subject into our most serious Consideration and do most humbly concurr in Your Majesty's Opinion, of the propriety of putting this Country under a particular Government, by a Commission under Your Great Seal, with a most precise Description of its Boundaries, in Order to ascertain the actual possession of its Property, and with such Powers as may be necessary, as well to maintain and secure the free Exercise of the Indian Trade, which it is proposed all Your Majesty's Subjects shall enjoy within it, under proper Regulations, as to prevent its becoming a Refuge to Criminals and Fugitives.—But at the same time, we beg Leave to submit to Your Majesty, the following Objections which have occurred to us, against the annexing this Country to any particular Government, especially to that of Canada—

1^{st} We are apprehensive that, should this Country be annexed to the Government of Canada, a Colour might be taken on some future Occasion, for supposing that Your Majesty's Title to it, had taken it's Rise, singly from the Cessions made by France, in

[1] This reply from the Lords of Trade, with its inclosure are not contained in the A. and W. I. series "Canada," vol. I. They are taken from Canadian Archives Q. 1, p. 109.

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the late Treaty, whereas Your Majesty's Title to the Lakes and circumjacent Territory as well as to the Sovereignty over the Indian Tribes, particularly of the sixNations, rests on a more solid and even a more equitable Foundation; and perhaps nothing is more necessary than that just Impressions on this Subject should be carefully preserved in the Minds of the Indians, whose Ideas might be blended and confounded, if they should be brought to consider themselves as under the Government of Canada—

2d We are apprehensive as the whole of this Country would become subject to the Laws of a particular Government or Province, it would give that Province such superior Advantage in respect to the whole of the Indian Trade, which Your Majesty in Your Justice and Wisdom has determined to leave as open as possible, to all Your Subjects, as might controul and obstruct it to the Prejudice of Your other Colonies—

3d If this great Country should be annexed to the Government of Canada, we are apprehensive, that the Powers of such Government could not be carried properly into execution, either in respect to the Indians or British Traders, unless by means of the Garrisons at the different Posts and Forts in that Country, which must contain the greatest Part of Your Majesty's American Forces and consequently the Governor of Canada would become virtually Commander in Chief or constant and inextricable Disputes would arise, between him, and the commanding Officers of Your Majesty's Troops—

If these Objections should appear of Weight to Your Majesty, We would humbly propose, that a Commission under the Great Seal, for the Government of this Country, should be given to the Commander in Chief of Your Majesty's Troops for the time being adapted to the Protection of the Indians and the fur Trade of your Majesty's subjects; And We submit to your Majesty whether any Inconveniencies would arise, from such Commission, which would not equally arise from a like Commission to a Governor of any of Your Majesty's particular Colonies —

But as the Instructions to such Governour, if Your Majesty should approve of this Proposition, would require a great Variety of Information, both with respect to the Management of the Indian Tribes and Trade, which can only be had from Your Majesty's Commander in Chief, and Your Agents for Indian Affairs, We would further submit, whether the issuing such Commission and Instructions, may not be delayed; 'till by the receipt of such Information, which Your Majesty has been graciously pleased to direct, We are enabled to make a full and particular Report on that very important subject.— And we flatter Ourselves, that no such delay will produce any bad Consequences, either in Respect to this Country's being considered as direlect, while Your Majesty's Troops are in the actual possession of every Post and Fort formerly enjoyed by the French, or in respect of Criminals and Fugitives, taking refuge in this Country with Impunity, as this may be easily prevented by an Instruction to the present Commander in Chief, empowering and directing him to send back all such Persons to their respective Colonies—

In the mean time We humbly propose that a Proclamation be immediately issued by Your Majesty as well on Account of the late Complaints of the Indians, and the actual Disturbances in Consequence, as of Your Majesty's fixed Determination to permit no grant of Lands nor any settlements to be made within certain fixed Bounds, under pretence of Purchase or any other Pretext whatever, leaving all that Territory within it free for the hunting Grounds of those Indian Nations Subjects of Your Majesty, and for the free trade of all your Subjects, to prohibit strictly all Infringements or Settlements to be made on such Grounds, and at the same time to declare Your Majesty's Intentions to encourage all such Persons who shall be inclined to commence new Settlements from Your old Colonies, together with all foreign Protestants, coming by themselves or with such Undertakers, in Your new Colonies of East and West Florida or your old Col ny of Nova Scotia with particular regard to be shewn to those Officers and Soldiers, more especially those residing in America, who have so faithfully and bravely distinguished themselves, during the War, by allowing; Five thousand Acres lying together to every Field Officer; Three thousand Acres to every Captain, Two thousand five hundred Acres to every Subaltern or Staff Officer; One hundred Acres to every non-commission Officer, and Fifty Acres, to every private Man; in such parts as they shall chuse, on condition, that they shall personally apply for and reside upon them subject to such

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terms of Cultivation, as your Majesty shall think proper to impose on all Persons undertaking such Settlements, which Encouragements may be also extended to reformed Commission Officers in Your Majesty s Navy in Case Your Majesty shall judge it reasonable and expedient.

All which is most humbly submitted

SHELBURNE
ED. ELIOT
GEO : RICE
ORWELL
BAMBER GASCOYNE

WHITEHALL
Aug^t 5th 1763

Endorsed. Aug^t 5th 1763.

R 6th. Lords of Trade

Report concerning the Lands to be reserved for the Indians—Proposing that a Commission under the Great Seal be given to the Commander in Chief, for the Government of that Country—with objections to the annexing them to any Province—and Proposing an immediate Proclamation concerning Indian Lands—

Inclosure in N° 10.

Halifax to the Lords of Trade.[1]

S^t JAMES's Sept^r 19th 1763.

Lords of Trade.

MY LORDS,—Having laid before the King Your Lordships, Representation of the 5th of August last, transmitted to the late Earl of Egremont in your Letter of the same Date, I am commanded to acquaint Your Lordships that His Majesty, upon Consideration of the Reasons therein set forth, is pleased to lay aside the Idea of including within the Government of Canada, or of any established Colony, the Lands which are to be reserved, for the present, for the Use of the Indians. And His Majesty thinks proper to direct that the Extent of the Commission, which Your Lordships are to prepare for the Hon^{ble} James Murray, shall be exactly such as is marked out in your first Report of the 8th of June last, and in the Map thereto annexed, under the Denomination of Canada. That such Government be described in the Commission, as comprehending all such Part of Canada on the North Side of the River S^t Lawrence, and all such Parts of His Majesty's antient Colonies of Nova Scotia, New England, and New York, on the South Side of the said River, as lie within the Limits above mentioned, and that It be called the Province of Quebec.

His Majesty approves Your Lordships' Proposition of issuing immediately a Proclamation, to prohibit for the present, any Grant or Settlement within the Bounds of the Countries intended to be reserved for the Use of the Indians ; and to declare the Encouragement, which His Majesty, in his Royal Bounty, is graciously, pleased to give to reduced Officers, and Soldiers, who served in North America, during the late War, and are desirous of settling in the Colonies. But His Majesty is of opinion, that several other Objects, of much Importance to his Service, might, with great Propriety, be provided for at the same time : And that the speedy Settlement of the new Colonies might be promoted ; the Friendship of the Indians more speedily and effectually reconciliated, and Provision be made for preventing Inconveniences, which might otherwise arise from the Want

[1] A. and W. I., vol. 268, p. 217

of Civil Jurisdiction in the interior, and reserved Countries, by extending such Proclamation to the following Purposes, viz^{t}

To make known the Establishment and Limits of the four new Colonies, and the Additions made to the Governments of Newfoundland, Nova Scotia, and Georgia.

To declare the Constitution of the new Governments, as established for the present, & intended in future, and the general Powers which the Governors will have of granting Lands within Them.

To prohibit private Purchases of Lands from Indians.

To declare a free Trade for all His Majesty's Subjects with all the Indians, under Licence, Security, and proper Regulations.—And

To impower all Military Officers and Agents for Indian Affairs, within the reserved Lands, to seize such Criminals, and Fugitives, as may take Refuge in that Country, and to send them to be tried in any of the old Colonies (if That can legally be done) or else to that Government, from which They respectively fled.

It is therefore His Majesty's Pleasure, that Your Lordships do immediately prepare, and transmit to me the Draught of such a Proclamation as may extend to the several Points abovementioned.—But, with respect to One of Them, namely the Encouragements to be offered to reduced Officers, and Soldiers, I am to acquaint Your Lordships, that His Majesty's Intentions are, To grant to such reduced Officers only, as have served in North America during the late War, and to such private Soldiers only, as have been, or shall be, disbanded in America, and are actually residing there, the following Quantities of Land, in any of the Colonies on the Continent, upon the usual Reservation of Quit-Rents, after the Expiration of ten Years, and upon sure Terms of immediate Settlement, & Cultivation; viz^{t}

To every Person having the Rank of a Field Officer	5000 Acres
To every Captain	3000
To every Subaltern or Staff Officer	2000
To every non-commissioned Officer	200
To every private Man	50.

His Majesty is also graciously pleased to offer the like Quantities of Land, upon the same Terms, to such reduced Officers of his Navy, of like Rank, as served on board his Ships of War in North America, at the time of the Reduction of Louisbourg, and Quebec in the late War.

I am farther to acquaint Your Lordships, that, as it is of the greatest Importance, that the General Plan, upon which His Majesty's Subjects are to carry on a free Trade with all the Indians of North America, should be established as soon as possible, His Majesty expects that Your Lordships will avail Yourselves of every Information in Your Power, and lay before Him, with all possible Dispatch, a System of Regulations for that purpose.

As to the Commission proposed in Your Lordships,' Report of the 5th of August to be given to the Commander in Chief of His Majesty's Forces, for the government of the interior Country, if upon Experience, & future Information, it shall still appear to Your Lordships to be expedient, & practicable, You will be pleased to prepare, and lay it before His Majesty.

I am &c

DUNK HALIFAX.[1]

endorsed: Sept^{r} 19th 1763.

Dra^{t}

[1] George Dunk, Earl of Halifax, succeeded Hon. George Grenville as Secretary of State (Northern Department) Oct. 14th, 1762. On Aug. 21st, 1763, the Earl of Egremont died suddenly from apoplexy and the Earl of Halifax temporarily took over the duties of the department, being formally transferred to the Southern Department about Sept. 9th. He was succeeded in the Northern Department by the Earl of Sandwich.

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To the Lords of Trade

Letter of Reference concerning the extent of the new Provinces—The Lands to be reserved for the use of the Indians by Proclamation—A free Trade with the Indians under proper Licences & Regulation—The Lands to be granted to Reduced Officers and Soldiers—And a Commission proposed to be given to the Commander in Chief for the Government of the Interior Country.

Lords of Trade to Halifax.[1]

WHITEHALL October 4th 1763.

MY LORD,—In obedience to His Majesty's Commands, signified to us by Your Lordship's Letter of the 19th of last Month, we have prepared, and herewith transmit to your Lordship, the Draught of a Proclamation, conformable to the Directions contained in your Lordship's Letter; And having laid the said Draught before His Majesty's Attorney General, He has reported to us, That, the same is agreeable to Law, and to the usual Form of Proclamations.

We have only to observe to your Lordship, that, in order to save time, we have fixed the Limits of East Florida according to Our Letter to your Lordship of the 28th of last Month, presuming that our Opinion, mentioned therein, will be approved of by His Majesty.

We beg leave further to add, That as it appears to us, upon a Revision of the Report of this Board of the 8th of June last, That, it will be expedient for His Majesty's Service, and give Confidence and Encouragement to such Persons as, are inclined to become Settlers in the new Colonies, That an immediate and public Declaration should be made of the intended permanent Constitution and that the power of calling Assemblies should be inserted in the first Commissions, We have therefore drawn the Proclamation agreeable to this Opinion, and have prepared the Commissions accordingly; and we humbly hope Our Conduct herein will meet with His Majesty's approbation, as we conceive, that any temporary Power of making Ordinances and Regulations, which must of necessity be allowed to the Governors and Councils before Assemblies can be called, as well as the mode of exercising that Power, will be better inserted in the Instructions, which we are now preparing.—

We are
My Lords
Your Lordship's
most obedient and
most humble Servants

HILLSBOROUGH
Ed BACON
JOHN YORKE.
ORWELL

Rt Honble Earl of Halifax
endorsed: October 4. 1763
Board of Trade

R 4th

Inclosing the Proclamation relative to America, and Observing that it will be better to insert, in the Instructions preparing for the Governors of the New Provinces, any temporary Power of making Ordinances & Regulations which may be allowed to the Governors & Councils, than in the first Commissions. 20th An Inclosure.

B. N° 5.

[1] A. & W. I., Vol. 268, p. 227.

MINISTRY OF CULTURE GOVERNMENT OF INDIA

PROCEEDINGS IN THE PRIVY COUNCIL. [1]

At the Court at St James's

the 5th day of October 1763.

Present

The King's Most Excellent Majesty

&c. &c.

Proclamation relative to the settling the New Governments in America—Approved.

Whereas there was this day read at the Board a Draught of a Proclamation prepared by the Lords Commissioners for Trade and Plantations relative to the erecting within the Countries and Islands ceded and confirmed to His Majesty by the late Definitive Treaty, four distinct and separate Governments by the Names of Quebec, East Florida, West Florida Grenada, and declaratory of the Constitution of the said New Colonys, of the encouragements to be given to reduced Officers and Soldiers and the Regulations to be observed in respect to the Indian Commerce and Country—His Majesty taking the said Draught of a Proclamation into His Royal Consideration, was pleased with the advice of His Privy Council to approve thereof, and to Order, as it is hereby Ordered that the Right Honourable the Earl of Halifax, One of His Majestys Principal Secretarys of State do cause the said Draught of a Proclamation (which is hereunto annexed) to be prepared for His Majesty's Royal Signature.—

Proclamation—Memd this Proclamation was signed by His Majty and dated the 7th Inst.

Seals Draughts to be prepared for East and West Florida, Quebec and the Grenadas—

Whereas there was this day read at the Board a Representation from the Lords Commissionners for Trade aud Plantations, setting forth that His Majesty having been graciously pleased to approve a Plan for the erecting and establishing four Civil Governments in the Islands and Territories in America, ceded to His Majesty by the late Definitive Treaty, and it appearing to be necessary and expedient that a Publick Seal should be prepared for Sealing all publick Instruments in each of those Governments agreeable to the Method practiced and established in all other His Majesty's Colonies in America; The said Lords Commissioners therefore propose that Directions may be given to prepare with all possible Dispatch a Draught of a Seal for each of the said Governments conformable to the following Descriptions Vizt—

For the Province of Quebec

On the One side His Majestys Effigies, pointing to a Chart of that Part of America through which the River of St Lawrence flows, including the Gulph and with this Legend or Motto underneath, Extensæ gaudent agnoscere Metæ; and this Inscription around the Circumference, Sigillum Provinciæ nostræ Quebecensis in America; and on the Reverse His Majesty's Arms, Crown, Garter, Supporters and Motto with this Inscription round the circumference, Geo. III. Dei Gratia Magnæ Britanniæ, Franciæ et Hiberniæ Rex, Fidei Defensor Brunsvici et Luneburgi Dux, Sacri Romani Imperii, Archi Thesaurarius et Elector.

Drafts of Commicons for the Govrs of Quebec, East Florida, West Florida & and *Grenadas*.

Upon reading this day at the Board a Representation* from the Lords Commissioners for Trade and Plantations dated the 4th of this Instant together with Draughts of Commissions prepared by them for the Honourable James Murray, Esqr to be Governor of

* This Representation is quoted in the Report of the Lords of the Committee upon the Drafts of Commissions for the Governors of Quebec, &c., 6th October, 1763.

[1] Privy Council Register; Geo. III., p. 100,

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Quebec, James Grant Esq^r to be Governor of East Florida, George Johnstone Esq^r to be Governor of West Florida, and Robert Melvill Esq^r to be Governor of Granada, Dominico, S^t Vincent and Tobago—It is Ordered by His Majesty in Council that the said Representation and Draughts of Commissions Be, and they are hereby referred to the Right Honourable the Lords of the Committee of Council for Plantation Affairs to consider the same and Report their Opinion thereupon to His Majesty at this Board.—

REPORT ON COMMISSIONS FOR GOVERNORS.[1]

N° 9. A.

AT THE COUNCIL CHAMBER WHITEHALL

the 6^th day of October 1763—

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs &c^a

Present

Earl of Sandwich — Earl of Hillsborough[2]

Earl of Halifax

Comi̅cons Report of the Lords of the Committee upon the Drafs of Commissions for the Gov^rs of Quebec, East Florida, West Florida and the Granades—

Your Majesty having been pleased by Your Order in Council of the 5^th of this Instant to referr unto this Committee a Representation from the Lords Commissioners for Trade and Plantations, setting forth, " that in Obedience to Your Majesty's Commands signified to them in " a Letter from the late Earl of Egremont dated the 14^th July, last, " they have prepared Draughts of Commissions for the Honourable " James Murray Esq^r to be Governor of Quebec, James Grant Esq^r to " be Governor of East Florida, George Johnston Esq^r to be Governor " of West Florida, and Robert Melvil Esq^r to be Governor of Grenada, " Dominico and Tobago—That in the Description of the Governments " of Quebec, East Florida, and West Florida they have conformed " to the Limits and Bounds which your Majesty has been pleased to " direct and approve, and as they conceived it to be Your Majesty's " Royal Intention, that the Form and Constitution of Government in " these new Colonies, should be as near as may be similar to what has " been established in those Colonies, which are under Your Majesty's " immediate Government, they have therefore prepared these Commis- " sions accordingly, by which the Governors are impower'd and " directed so soon as the Circumstances of the Colonies will admit " thereof, to summon and call General Assemblys of the Freeholders " in their respective Governments in such Manner as is practised in " Your Majesty's other Colonies; That they have omitted in these " Commissions any Power that it may be necessary to grant to the " Governors and Councils of Your Majestys said new Colonies to " make Temporary Regulations until Assemblys can be called, because " they were of Opinion that an immediate and publick Declaration of " the intended permanent Constitution, and an Insertion in the first " Commissions of the Power of calling Assemblys so soon as the Cir- " cumstances will admit, is expedient for Your Majesty's Service, and " will give Confidence and Encouragement to such of Your Majesty's " Subjects, as shall incline to settle in your said new Colonies, and " because such Power of making temporary Regulations may be given

[1] Privy Council Register, Geo. III., p. 112.

[2] Wills, Earl of Hillsborough, succeeded the Earl of Shelburne as President of the Board of Trade, Sept. 9th, 1763.

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"in the General Instructions which they shall prepare and lay before "Your Majesty with all possible Dispatch.—That there are in the "Commissions to the Governors of Your Majesty's other Colonies "some Clauses respecting the Power of suspending and comptrolling "the Council, but as they conceive these Matters may be more pro-"perly and regularly provided for in the Instructions under those "Articles which direct the Nomination of the Council, ascertain their "Authority and point out their Duty and Methods of Proceedings, "they have therefore omitted these Clauses in the present Draughts "in order to insert them in the Instructions—"

The Lords of the Committee in Obedience to Your Majestys said Order of Reference this day took the said Representation and Draughts of Commissions into their Consideration, and are of opinion, that in order to make the said Commissions agreeable to the Instructions to be given to the said Governors the following Addition should be made to each of the said Commissions at the End of that Article whereby the said Governors are empowered to make Grants of Land—Viz[t]

"Provided the same be made conformable to the Instructions here-"with delivered to you, or to such other Instructions as may hereafter "be sent to You under Our Signet and Sign Manual, or by Our Order "in Our Privy Council.—"And the Lords of the Committee having accordingly caused the said Addition to be made in each of the said Draughts do agree humbly to lay the same so amended before Your Majesty for Your Royal Approbation – –

Committee Report upon the Draught of a Comicon for Montagu Wilmot Esq[r] to be Gov[r]

Your Majesty having been pleased by Your Order in Council of the 5[th] of this Instant to referr unto this Committee a Representation from the Lords Commissioners for Trade and Plantations setting forth, "that in Obedience to Your Majesty's Commands signified to them by a Letter from the Earl of Halifax, dated the 27[th] of last Month they have prepared, and humbly lay before Your Majesty, the Draught of a Commission appointing Montagu Wilmot Esq[r] Governor of Nova Scotia, in which Draught they have so described the Northern and Eastern Limits of this Province, as to make it conformable to what has been already approved in respect to the Southern boundary of the Province of Quebec, and to comprehend the Islands of Cape Breton and S[t] Johns,[1] that they have also made the River S[t] Croix the Boundary to the Westward, for, although it be true that the ancient Limits of this Province, as it was possessed by France under the Treaties of Breda and Ryswick and ceded to Great Britain by the Treaty of Utrecht under the Name of Acadia, did extend as far West as the River Pentagoet or Penobscot, yet as it appears to have been determined in the Year 1732, upon a full examination of the Claims of the Province of the Massachusets Bay, as well by the Attorney and Sollicitor General, as by this Board, and finally by His Majesty in Council, that the said Province had a right of Jurisdiction and property under the Limitation of the Charter, to the Country between the Rivers Sagadehock and S[t] Croix, and as in consequence of this Examination, the Instructions given to Colonel Dunbar, and to the Governor of Nova Scotia to make Settlements within that Tract were revoked, and it was Ordered that the Province should not be disturbed in the possession they claim to have of this Country it does not appear to them that this question is for the present open to a New Discussion : But as they conceive there are many material circumstances in favour of Your Majesty's Right to the Country as far West-

[1] Now Prince Edward Island.

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ward as the River Penobscot which were not stated in the Case laid before the Attorney and Sollicitor General in 1732, upon which Case their Opinion and the Dicision of the Council were founded, they do not think it adviseable that this Restriction of the Western Bounds of Nova Scotia to the River S^t Croix should pass without some reservation of Your Majesty's Right to the Country between that River and Penobscot, being entered upon the Council Books; And they rather humbly proposed this to Your Majesty, as it may be a means of hereafter removing any Objection which may be taken on the part of the Province of Massachusets Bay to the Southern Line of Quebec, as far as it concerns their Northern Limits, for if such Objection should be made, and it should appear upon examination they have any just ground of Complaint, it will be in Your Majesty's power to make them a reasonable Compensation, by allowing their Jurisdiction to extend as far Eastward as the River S^t Croix, between which and the River Penobscot they have lately made some considerable Settlements".

The Lords of the Committee in Obedience to Your Majestys said Order of Reference this day took the said Representation and Draught of a Commission into their Consideration, and being of Opinion that Your Majesty's Right to the Country between the River S^t Croix, and the River Penobscot (the ancient Limits of the said Province) ought to be reserved in a more publick manner than by an Entry in the Council Books, do therefore propose that the following alteration should be made in the said Draught of a Commission for that purpose. Viz^t After the Appointment of Montagu Wilmot to be Captain General and Governor in Chief in and over the Province of Nova Scotia, the description of the Boundarys of the said Province to be left out, and the following words inserted in lieu thereof. "Which we have "thought proper to restrain and comprize within the following limits— "Viz^t: to the Northward, Our said Province shall be bounded "by the Southern Boundary of Our Province of Quebec as far "as the Western extremity of the Bay des Chaleurs; To the East- "ward by the said Bay and the Gulph of S^t Lawrence, to the "Cape or Promontory called Cape Breton in the Island of that "Name including that Island, the Island of S^t Johns, and all other "Islands within Six Leagues of the Coast; To the Southward by the "Atlantick Ocean from the said Cape to Cape Sable, including the "Island of that Name, and all other Islands within forty Leagues of "the Coast, with all the Rights, Members and Appurtenances what- "soever thereunto belonging; And to the Westward altho' Our said "Province hath anciently extended, and doth of Right extend as far "as the River Pentagouet or Penobscot, it shall be bounded by a Line "drawn from Cape Sable across the Entrance of the Bay of Fundy, "To the mouth of the River S^t. Croix, by the said River to its source, "and by a Line drawn due North from thence to the Southern Bound- "ary of Our Colony of Quebec." And their Lordships are further of Opinion that it will be proper to make the following Addition at the end of the Article empowering the said Governor to make Grants of Lands Viz^t "Provided the same be made conformable to the Instruc- "tions herewith delivered to you, or to such other Instructions as "may hereafter be sent to you under Our Signet and Sign Manual, "or by Our Order in Our Privy Council."

These boundaries are the same as those described in Montagu Wilmot's Com^n dated 21. Nov. 1763.

The Lords of the Committee have therefore caused the said alteration and Addition to be made in the said Draught of a Commission accordingly, and do agree humbly to lay the same before Your Majesty for Your Royal Approbation—



London. Printed for Robt. Sayer and John Bennett, Map and Printsellers No. 53 in Fleet Street, as the Act directs, 16th February 1776.

Halifax to Lords Commissioners for Trade and Plantations.

B. N° 5.—

S[t] JAMES's Oct. 8. 1763.

Lords Commiss[rs] for Trade & Plantations—

A. & W. I. Vol. 268 p. 261 1763 Oct. 8.

MY LORDS,—Having laid before the King your Lordships Letter of the 6[th] instant with the Dra[t] of a Proclamation therein inclosed, and His Majesty having been pleased to approve the said Draught, & to order it to be printed, & passd under the great Seal, in the usual Form, I send your Lordships herewith a number of printed Copies of the said Proclamation & am to signify to your Lordships His Majesty's Pleasure that you should transmit them to the Governors of His Majesty's several Colonies & Plantations in America & to the Agents for Indian Affairs.

I am &[c]

DUNK HALIFAX

endorsed: October 8. 1763.
Dra[t] to Board of Trade
Signifying the King's Pleasure that they should transmitt Copies of the Proclamation to the Governors of the Colonies & the Agents for Indian Affairs.—

BY THE KING.[1]

A PROCLAMATION.

GEORGE R.

WHEREAS We have taken into Our Royal Consideration the extensive and valuable Acquisitions in America, secured to our Crown by the late Definitive Treaty of Peace concluded at Paris, the 10th Day of February last; and being desirous that all Our loving Subjects, as well of our Kingdom as of our Colonies in America,[2] may avail themselves with all convenient Speed, of the great Benefits and Advantages which must accrue therefrom to their Commerce, Manufactures, and Navigation, We have thought fit, with the Advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving Subjects, that we have, with the Advice of our Said Privy Council, granted our Letters Patent, under our Great seal of Great Britain, to erect, within the Countries and Islands ceded and confirmed to Us by the said Treaty, Four distinct and separate Governments, styled and called by the names of Quebec, East Florida, West Florida and Grenada, and limited and bounded as follows, viz.

[1] Taken from the text as contained in the "Papers Relative to the Province of Quebec," 1791, in the Public Record Office. Copied in the Canadian Archives Q 62 A, pt. I., p. 114.

[2] The attitude of the Home Government at this time, on the subject of immigration, the kind of immigrants to be favoured, and even the need of an outlet for surplus population on the part of some of the older colonies in America, may be gathered from a report of the Lords of Trade, Nov. 5, 1761, upon the proposal to transport a number of Germans to the American Colonies after the peace. They point out that as "regards colonies possessed before the war, the increase of population is such 'as scarce to leave room in some of them for any more inhabitants.' The encouragement and advantages of the less populated southern colonies are such as to induce sufficient migration without burdening the public. Our own reduced sailors and soldiers would be more proper objects of national bounty, and better colonists, than foreigners, whose ignorance of the English language, laws, and constitution cannot fail to increase those disorders and that confusion in our Government, which the too great migration of people from Germany already fatally introduced in some of our most valuable possessions." *Calendar of Home Office Papers, Reign of George III. 1760-1765.* No. 349.

First—The Government of Quebec bounded on the Labrador Coast by the River St. John, and from thence by a Line drawn from the Head of that River through the Lake St. John, to the South end of the Lake Nipissim; from whence the said Line, crossing the River S^t Lawrence, and the Lake Champlain, in 45. Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River S^t Lawrence from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs, and the Coast of the Gulph of S^t Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River S^t Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of S^t John.

Secondly—The Government of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola River; to the Northward by a Line drawn from that part of the said River where the Chatahouchee and Flint Rivers meet, to the source of St Mary's River, and by the course of the said River to the Atlantic Ocean; and to the Eastward and Southward by the Atlantic Ocean and the Gulph of Florida, including all Islands within Six Leagues of the Sea Coast.

Thirdly—The Government of West Florida, bounded to the Southward by the Gulph of Mexico, including all Islands within Six Leagues of the Coast, from the River Apalachicola to Lake Pontchartrain; to the Westward by the said Lake, the Lake Maurepas, and the River Mississippi; to the Northward by a Line drawn due East from that part of the River Mississippi which lies in 31 Degrees North Latitude, to the River Apalachicola or Chatahouchee; and to the Eastward by the said River.

Fourthly—The Government of Grenada, comprehending the Island of that name, together with the Grenadines, and the Islands of Dominico, S^t Vincent's and Tobago.

And to the end that the open and free Fishery of our Subjects may be extended to and carried on upon the Coast of Labrador, and the adjacent Islands, We have thought fit, with the advice of our said Privy Council, to put all that Coast, from the River S^t John's to Hudson's Streights, together with the Islands of Anticosti and Madelaine, and all other smaller Islands lying upon the said Coast, under the care and Inspection of our Governor of Newfoundland.

We have also, with the advice of our Privy Council, thought fit to annex the Islands of S^t John's and Cape Breton, or Isle Royale, with the lesser Islands adjacent thereto, to our Government of Nova Scotia.[1]

We have also, with the advice of our Privy Council aforesaid, annexed to our Province of Georgia all the Lands lying between the Rivers Alatamaha and S^t Mary's.

And whereas it will greatly contribute to the speedy settling our said new Governments, that our loving subjects should be informed of our Paternal care, for the security of the Liberties and Properties of those who are and shall become Inhabitants thereof, We have thought fit to publish and declare, by this Our Proclamation, that We have, in the Letters Patent under our Great Seal of Great Britain, by which the said Governments are constituted, given express Power and Direction to our Governors of our Said Colonies respectively, that so soon as the state and circumstances of the said Colonies will admit thereof, they shall, with the Advice and Consent of the Members of our Council, summon and call General Assemblies[2] within the said Governments respectively, in such Manner and Form as is used and directed in those Colonies and Provinces in America which are under our immediate Government; and We have also given Power to the said Governors, with the consent of our Said Councils, and the Representatives of the People so to be summoned as aforesaid, to make, constitute, and ordain Laws, Statutes, and Ordinances for the Public Peace, Welfare, and good Government of our said Colonies, and of the People and Inhabitants thereof, as near as may be agreeable to the Laws of England, and under such Regulations and Restrictions as are used in other Colonies; and in the mean Time, and until such Assemblies can be called as aforesaid, all Persons Inhabiting in or resorting to our Said Colonies may confide in our

[1] Nova Scotia would thus include the three present maritime provinces of Nova Scotia, New Brunswick, and Prince Edward Island.

[2] With reference to the reasons given and provisions made for calling Assemblies in the new Provinces, see Report of the Lords of Trade, Oct. 4th, 1763, p. 114, also report of the Lords of the Committee of Council for Plantation Affairs, Oct. 6th, 1763, p. 116. See also the Commission to Hon. James Murray to be Governor of Quebec, p. 128, and the Instructions to Governor Murray, sec. 11, p. 135.

Royal Protection for the Enjoyment of the Benefit of the Laws of our Realm of England; for which Purpose We have given Power under our Great Seal to the Governors of our said Colonies respectively to erect and constitute, with the Advice of our said Councils respectively, Courts of Judicature and public Justice within our Said Colonies for hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity, and as near as may be agreeable to the Laws of England, with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all Civil Cases, to appeal, under the usual Limitations and Restrictions, to Us in our Privy Council.

We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the Governors and Councils of our said Three new Colonies, upon the Continent full Power and Authority to settle and agree with the Inhabitants of our said new Colonies or with any other Persons who shall resort thereto, for such Lands, Tenements and Hereditaments, as are now or hereafter shall be in our Power to dispose of; and them to grant to any such Person or Persons upon such Terms, and under such moderate Quit-Rents, Services and Acknowledgments, as have been appointed and settled in our other Colonies, and under such other Conditions as shall appear to us to be necessary and expedient for the Advantage of the Grantees, and the Improvement and settlement of our said Colonies.

And Whereas, We are desirous, upon all occasions, to testify our Royal Sense and Approbation of the Conduct and bravery of the Officers and Soldiers of our Armies, and to reward the same, We do hereby command and impower our Governors of our said Three new Colonies, and all other our Governors of our several Provinces on the Continent of North America, to grant without Fee or Reward, to such reduced Officers as have served in North America during the late War, and to such Private Soldiers as have been or shall be disbanded in America, and are actually residing there, and shall personally apply for the same, the following Quantities of Lands, subject, at the Expiration of Ten Years, to the same Quit-Rents as other Lands are subject to in the Province within which they are granted, as also subject to the same Conditions of Cultivation and Improvement; viz.

To every Person having the Rank of a Field Officer	5,000 Acres.
To every Captain	3,000 Acres.
To every Subaltern or Staff Officer	2,000 Acres.
To every Non-Commission Officer	200 Acres.
To every Private Man	50 Acres.

We do likewise authorize and require the Governors and Commanders in Chief of all our said Colonies upon the Continent of North America to grant the like Quantities of Land, and upon the same conditions, to such reduced Officers of our Navy of like Rank as served on board our Ships of War in North America at the times of the Reduction of Louisbourg and Quebec in the late War, and who shall personally apply to our respective Governors for such Grants.[1]

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.—We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or

[1] On Oct. 13th, 1763, the Earl of Halifax wrote to the Attorney General, inquiring "as to the means which should be used to nullify the doubtfulness of a paragraph in H. M's proclamation, which makes it appear that only those officers which served both at Louisbourg and Quebec are entitled to grants of land, such not being His Majesty's intention." *Calendar of Home Office Papers, 1760–1765*, no. 1036.

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pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said Three new Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians; In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for that Purpose; And we do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of Our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And we do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Reward, taking especial Care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And we do further expressly enjoin and require all Officers whatever, as well Military as those Employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper guard to the Colony where the

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Crime was committed of which they stand accused, in order to take their Trial for the same.[1]

Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign.

GOD SAVE THE KING

EGREMONT TO GOVERNOR MURRAY.[2]

WHITEHALL, Augt 13th 1763.

Govr MURRAY.

SIR, I take great Satisfaction in acquainting you, that His Majesty has been graciously pleased to confer on you the Government of Canada, over which Country you have already presided so long with such Applause, that The King is persuaded this appointment will be received by His new subjects as a singular mark of His Majesty's Royal attention to their Welfare & Happiness.

The necessary Commission & Instructions for you, on this occasion, which are preparing by the Board of Trade with all Dispatch, will be forwarded to you as soon as possible, and as they will contain very full Directions, not only with regard to the Form of Government to be established in Canada, but to your Conduct in every particular; I have no new Orders to transmit to you at present; But His Majesty thinks it very material, that you should be apprized, that He has received Intelligence, which gives some reason to suspect, that the French may be disposed to avail Themselves of the Liberty of the Catholick Religion granted to the Inhabitants of Canada, in order to keep up their Connection with France, and, by means of the Priests, to preserve such an Influence over the Canadians, as may induce them to join, whenever Opportunity should offer, in any attempts to recover that Country; It therefore becomes of the utmost Consequence to watch the Priests very narrowly, and to remove, as soon as possible, any of them, who shall attempt to go out of their sphere, and who shall busy themselves in any civil matters: For tho' The King has, in the 4th Article of the Definitive Treaty, *agreed to grant the Liberty of the Catholick Religion to the Inhabitants of Canada;* and tho' His Majesty is far from entertaining the most distant thought of restraining *His new Roman Catholick Subjects from professing the Worship of their Religion according to the Rites of the Romish Church:* Yet the Condition, expressed in the same Article, must always be remembered, vizt: *As far as the Laws of Great Britain permit,* which Laws prohibit absolutely all Popish Hierarchy in any of the Dominions belonging to the Crown of Great Britain, and can only admit of a Toleration of the Exercise of that Religion; This matter was clearly understood in the Negotiation of the Definitive Treaty; The French Ministers proposed to insert the Words, *comme ci-devant,* in order that the Romish Religion should continue to be exercised in the same manner as under their Government; and they did not give up the Point, 'till they were plainly told that it would be deceiving them to admit those Words, for The King had not the Power to tolerate that Religion in any other Manner, than *as far as the Laws of Great Britain permit:* These Laws must be your guide in any Disputes that may arise on this Subject; But, at the same Time, that I point out to you the necessity of adhering to Them, and of attending with the utmost Vigilance to the Behaviour of the Priests, The King relies on your acting with all proper Caution & Prudence in regard

[1] The Earl of Halifax, in a letter to the Secretary at War, March 11, 1765, directing him to prepare and bring into Parliament a bill to extend the Mutiny Act to North America, points out that there are many posts in that country which are not under any civil jurisdiction, and that therefore the additions to be made to the 60th clause of the Mutiny Act are very necessaary. This is especially so since, in the Proclamation of Oct. 7th, 1763, while provision is made for apprehending and bringing to justice such criminals as might take refuge at these posts, yet no mode is established for the punishment of crimes committed at those posts, or in the reserved territories. See *Calendar of Home Office Papers 1760–1765, No. 1671.*

[2] This is a portion of a letter from the Secretary of State, the Earl of Egremont, to Governor Murray. The remainder of the letter refers to the priest Le Loutre who had formerly occasioned much trouble in Acadia, and also to claims for lands granted to the late French Governor, Vaudreuil, in western Canada. Copy, from Public Record Office, in Canadian Archives, Q. 1, p. 117.

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to a matter of so delicate a Nature as this of Religion; And that you will, as far as you can, consistently with your Duty in the Execution of the Laws, & with the Safety of the Country, avoid every Thing that can give the least unnecessary Alarm, or Disgust, to His Majesty's new Subjects.

* * * * * * *

I am &c

EGREMONT.

Endorsed: Dra^{t} to Governor Murray
Aug^{t} 13th 1763.

PASSING GOVERNORS' COMMISSIONS.[1]

AT THE COURT AT ST. JAMES'S
the 7th day of October 1763

Present

The King's most Excellent Majesty—

&c &c—

Commissions For the Gov^{rs} of Quebec, East Florida, West Florida, and the Grenadoes—App^{d}.

Upon reading this day at the Board a Report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs dated the 6th of this Instant humbly offering to His Majesty for His Royal Approbation four Draughts of Commissions prepared by the Lords Commiss^{rs} for Trade and Plantations for the Honourable James Murray Esq^{r} to be Governor of Quebec, James Grant Esq^{r} to be Governor of East Florida, George Johnstone Esq^{r} to be Governor of West Florida, and Robert Melvill Esq^{r} to be Governor of Grenada, Dominico, S^{t} Vincent and Tobago—His Majesty taking the same into Consideration is pleased with the Advice of His Privy Council to approve of the said Draughts of Commissions (which are hereunto annexed) and to order as it is hereby Ordered that the Right Honourable the Earl of Halifax one of His Majestys Principal Secretarys of State do cause Warrants to be prepared for His Majestys Royal Signature in order to pass the said Commissions under the Great Seal of Great Britain.—

Nova Scotia Commission for Montagu Wilmot to be Gov^{r} App^{d}

Upon reading this day at the Board a Report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs, dated the 6th of this Instant humbly offering to His Majesty for His Royal Approbation a Draught of a Commission prepared by the Lords Commiss^{rs} for Trade and Plantations for Montagu Wilmot Esq^{r} to be Captain General and Governor in Chief of His Majestys Province of Nova Scotia in America—His Majesty taking &c^{a} ut Antea.—

ADDITIONAL CLAUSES IN NEW COMMISSIONS.[2]

4th November 1763

Present

The Kings Most Excellent Majesty &c. &c—

Georgia Order approving an Instrument for extending the Southern Boundary Line—

Whereas there was this day read at the Board a Report of His Majestys Attorney General dated the 29th of last Month together with a Draught of an Instrument prepare'd by him revoking such part and so much of the Commission appointing James Wright Esq^{r}

[1] Copied from Privy Council Register. Geo. III., p. 117.
[2] Copied from Privy Council Register. Geo. III., p. 139.

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The Comⁿ to Wright revoking that dated 4. May 1761 is dated 24 January 1764

to be Governor of the Province of Georgia bearing date the 4th day of May 1761, which doth any way relate to or concern the Limits and Bounds of the said Province, and appointing new* Bounds and Limits to the said Province whereby the Southern Boundary Line is extended to the most Southern Stream of a certain River called S^t Mary—

In the Comⁿ of 20 Jan^y 1764 quoting that revoked the River Alatamaha is mentioned as the Southern boundary

His Majesty taking the same into Consideration, is pleased with the Advice of His Privy Council to approve of the said Draught of an Instrument (which is hereunto annexed) and to Order, as it is hereby Ordered, that the Right Honourable the Earl of Halifax One of His Majestys Principal Secretarys of State do cause a Warrant to be prepared for His Majesty's Royal Signature in order to pass the said Instrument under the Great Seal of Great Britain.—

4th Nov. 1763 New Commicons Lett^r from the Att^y Gen^l. for making an Addition to the Clause relative to Granting Lands. Ref^d to a Commee

Upon reading this day at the Board a Letter from M^r Attorney General to the Right Honourable the Earl of Halifax, one of His Majestys Principal Secretaries of State, praying that an Addition should be made to the Clause in the Commissions for the Governors of Quebec, Grenada, East Florida, and West Florida relative to the granting Lands—It is Ordered by His Majesty in Council that the said Letter and addition (which are hereunto annexed) Be, and they are hereby Referred to the Right Honourable the Lords of the Committee of Council for Plantation Affairs to consider the same and Report their Opinion thereupon to His Majesty at this Board

At the Council Chamber Whitehall the 11th day of November 1763—

By the Right Honourable the Lords of the Committee of Council for Plantation Affairs—

Commissions Committee Report for making an Addition to the clause in the Commicons for the Gov^rs of Nova Scotia, Quebec, East Florida, West Florida and the Grenada's relative to the Granting Lands—

Your Majesty having been pleased by Your Order in Council of the 4th Instant to referr unto this Committee a Letter from M^r Attorney General to the Right Honourable the Earl of Halifax one of Your Majestys Principal Secretarys of State proposing that the following Addition may be made to the Clause in the Commissions (approved by Your Majesty in Council on the 7th of last Month) for the Governors of Quebec, Grenada, East Florida, West Florida, and Nova Scotia relative to the Granting Lands—Viz^t

"Which Instructions, or any Articles contained therein, or any "such Order made in Our Privy Council, so far as the same shall "relate to the Granting of Lands, as aforesaid, shall from time to "time, be published in the Province, and entered of Record, in like "manner as the said Grants themselves are hereby directed to be "Entered."—

The Lords of the Committee in Obedience to Your Majestys said Order of Reference this day took the said Letter and addition into their Consideration, and being of Opinion that the same is proper and necessary, do therefore agree humbly to Report, that it may be adviseable for Your Majesty to cause the said Addition to be inserted in all the aforementioned Commissions accordingly.

11th Nov. 1763—

Instrucons Committee Report upon Draughts of Instrucons for the Gov^rs of Quebec, East Florida, West Florida and the Grenada's.

The Lords of the Committee, in Obedience to Your Majestys said Order of Reference, this day took the said Representation and Draughts of Instructions in their Consideration, and finding that the said Draughts of General Instructions contain all those Articles usually given to the Governors of Your Majesty's American Colonies and Islands respectively, which are necessary for, and applicable to these New Governments, together with such others as appear to tend to promote the Settlement and Improvement of them, And that the

*The boundaries here described agree with those given in Wright's Commission of 24 Jan^y 1764.

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Draughts of Instructions for the observance of the Acts of Parliament for the encouragement and Regulation of Trade and Navigation are exactly comformable to the Instructions given to the Governors of Your Majestys other American Colonies and Plantations.—Their Lordships do therefore agree humbly to lay the said Draughts of Instructions before Your Majesty for Your Royal Approbation.

AT THE COURT AT ST. JAMES'S

the 14th day of Novemr 1763

Present

The King's most Excellent Majesty &c &c.

Commissions Order for making an Addition to the Clause in the new Govrs Commicons relative to the Granting Lands Appd

Upon reading at the Board a Report from the Right Honourable the Lords of the Committee of Council for Plantation Affairs dated the 11th of this Instant upon considering a Letter from Mr Attorney General to the Right Honourable the Earl of Halifax One of His Majesty's Principal Secretaries of State proposing that the following Addition may be made to the Clause in the Commissions (approved by His Majesty in Council on the 7th of last Month) for the Governors of Quebec, Grenada, East Florida, West Florida and Nova Scotia relative to the granting Lands—Vizt

"Which Instructions, or any Articles &c—"

And the Lords of the Committee being of opinion that the said Addition is proper and necessary to be made in the said Commissions, His Majesty this day took the same into Consideration, and was pleased with the Advice of His Privy Council to approve thereof and to order as it is hereby Ordered, that the Right Honourable the Earl of Halifax one of His Majesty's Principal Secretarys of State, do cause the said Addition to be inserted in all the aforementioned Commissions accordingly—

COMMISSION OF CAPTAIN-GENERAL & GOVERNOR IN CHIEF OF THE PROVINCE OF QUEBEC.[1]

George the Third by the grace of God of Great Britain France and Ireland King Defender of the Faith and so forth ; To our Trusty and well beloved James Murray Esquire, Greeting.

Commission to be Captain General and Governor in chief of the Province

We, reposing especial trust and Confidence in the prudence, Courage and loyalty of you the said James Murray, of our especial grace, Certain Knowledge and meer motion, have thought fit to Constitute and appoint, and by these presents, do Constitute and appoint you, the said James Murray to be our Captain General and Governor in Chief in and over our Province of Quebec in America.

Boundaries of the Province

Bounded on the Labrador Coast by the River Saint John, and from thence by a line drawn from the head of that River through the lake Saint John to the south end of Lake Nepissin, from whence the said line Crossing the River Saint Lawrence and the lake Champlain in Forty five Degrees of Northern Latitude, passes along the high lands which Divide the Rivers that empty themselves into the said River Saint Lawrence from those which fall into the sea, and also along the north Coast of the Bay des Chaleurs and the Coast of the Gulfts of Saint Laurence to Cape Rosieres, and from thence, Crossing

The Governor is to act according to the powers and directions of this Commission & according to the Kings Instructions

[1] Copied from the Register of Commissions in the office of the Secretary of State, Canada.

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the mouth of the River Saint Lawrence by the west end of the Island of Anticosty terminates at the aforesaid River Saint John.

Together with all the Rights members, and appurtenances whatsoever thereunto belonging.

And we, do hereby require and Command you to do and execute all things in due manner that shall belong to your said Command and the Trust we have reposed in you, according to the several powers and Directions granted or appointed You by this present Commission and the instructions and authorities herewith given unto you, Or by such other powers instructions or authorities as shall at any time hereafter be granted or appointed under our Signet and Sign Manual, or by our Order in our Privy Council, and according to such reasonable laws and statutes as shall hereafter be made and agreed upon by you with the advice and Consent of the Council and Assembly of our said Province under your Government, in such manner and form as is herein after expressed.

Oaths to be taken by the Governor

And our will and pleasure is that You the said James Murray do after the publication of these our Letters patent, and after the appointment of our Council for our said province in such manner and form as prescribed in the instructions which you will herewith receive, in the first place take the oaths appointed to be taken by an act passed in the first Year of the Reign of King George the First Intitled (an act for the further security of His Majesty's Person and Government, and the succession of the Crown, in the Heirs of the late Princess Sophia, being protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors) as also that you make and subscribe the Declaration mentioned in an act of Parliament made in the twenty fifth Year of the Reign of King Charles the Second Intitled (an act for preventing Damages which may happen from Popish rescuants) and likewise that you take the oath usually taken by our Governors in other Colonies for the due execution of the Office & Trust of our Captain General and Governor in Chief in and over our said province, and for the due & impartial administration of justice; and further that you take the oath required to be taken by Governors of the Plantations to do their utmost that the several laws relating to Trade and Plantations be duly observed: which said oaths and Declarations our Council of our said Province, or any three of the members thereof, have hereby full power and authority, and are hereby required to tender and administer to You.—

Those appointed by 1. Geo. 1.

Declaration against popery Stat 25 Car: 2d

Oath of Office

Oath to observe the laws relating to Trade and Plantations.

Oaths to be taken by the Counsellors & Lieutn Governors of Montreal & Trois Rivieres

All which being duly performed you shall yourself administer to each of the members of our said Council, and to the Lieutenant Governors of Montreal & Trois Riviéres the said Oaths, mentioned in the said Act Intitled (an act for the further Security of His Majesty's person & Government and the succession of the Crown in the Heirs of the late Princess Sophia, being protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors) and also Cause them to make and subscribe the aforementioned Declaration, and also shall administer unto them the usual Oaths, for the due execution of their places and trust.

Power to administer or to authorize others to administer to any person in the Province the Oaths appointed by Stat 1. Geo: I.

And We do further give and grant unto you the said James Murray full power and authority from time to time, and at any time hereafter by Yourself, or by any other to be authorized by you in this behalf, to administer and give the Oaths mentioned in the said act (for the further security of His Majesty's Person and Government and the succession of the Crown in the Heirs of the late Princess Sophia being Protestants, and for extinguishing the hopes of the

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pretended Prince of Wales and his open and secret abettors) to all and every such person and persons as you shall think fit, who shall at any time or times pass into our said Province or shall be resident or abiding there.

Power to keep & use the publick seal

And we do hereby authorize and Impower you to keep and use the Publick seal, which will herewith be delivered to you, or shall be hereafter sent to you, for sealing all things whatsoever that shall pass the Great seal of our said Province.

Power to call an assembly of the Freeholders

And we, do hereby give and grant unto you the said James Murray full power and authority with the advice and Consent of our said Council to be appointed as aforesaid, so soon as the Situation and circumstances of our said Province under your Government will admit thereof, and when & as often as need shall require, to summon and call General Assemblies of the Freeholders and Planters within your Government, in such manner as you in your Direction shall judge most proper, or according to such further powers, Instructions, and authorities as shall be at any time hereafter granted or appointed you under our Signet and Sign Manual, or by our Order in Our Privy Council.

The Members of such assembly shall take the Oaths appointed by Stat: 1 Geo: 1;

and the declaration against popery

And our will and pleasure is, That the persons thereupon duly Elected by the Major Part of the Freeholders of the respective parishes, or precincts, and so returned, shall before their sitting take the oath mentioned in the said act intitled (an act for the Further security of his Majesty's person & Government and the succession of the Crown in the Heirs of the late princess Sophia being protestants, and for extinguishing the hopes of the pretended Prince of Wales and his open and secret abettors) as also make and subscribe the forementioned declaration: Which oaths & declaration you shall Commissionate fit persons under the publick seal of that our province, to tender and administer unto them and untill the same shall be so taken and subscribed, no person shall be Capable of sitting though Elected.

power to make Laws

not repugnant to the Laws of Great Britain

And we do hereby declare that the persons so Elected & Qualified shall be called the Assembly of that our province of Quebec; and that you the said James Murray, by & with the advice and Consent of our said Council and Assembly, or the major part of them, shall have full power & authority, to make, Constitute or Ordain, Laws Statutes & ordinances for the publick peace, Welfare, & good Government of our said province, and of the people and Inhabitants thereof, and such others as shall resort thereunto and for the benefit of us our heirs & successors: which said Laws Statutes and Ordinances are not to be repugnant, but as near as may be agreeable, to the laws & Statutes of this our Kingdom of Great Britain.

The Laws so made to be transmitted to England within three months

Provided that all such Laws Statutes and Ordinances of what nature or Duration soever they shall be within three months or sooner after the making thereof, Transmitted to us, under our seal of our said province for our approbation or disallowance of the same, as also duplicates thereof by the next Conveyance.—

If disallowed by the King they shall thenceforth become void

And in Case any, or all of the said Laws Statutes and Ordinances not before Confirmed by us, shall at any time be disallowed and not approved, and so signified by us, our Heirs, and Successors, under our, or their Signet and sign Manual, or by order of our, or their privy Council, unto you the said James Murray or to the Commander in Chief of our said Province for the time being; Then such and so many of the said Laws, Statutes, and Ordinances, as shall be so disallowed, and not approved, shall from thence forth cease determine

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and become utterly void and of no effect, anything to the contrary thereof notwithstanding

The Governor shall have a negative voice against both Council and Assembly

And to the end that nothing may be passed or done by our said Council or Assembly, to the prejudice of us, our Heirs and Successors, We will and ordain that you the said James Murray, shall have, and enjoy a Negative Voice in the making and passing all laws, Statutes and ordinances as aforesaid; and that you shall and may likewise from time to time, as you shall judge necessary, adjourn, prorogue or dissolve all General assemblies as aforesaid

power with the Consent of the Council to Erect Courts of Judicature

And We, do by these presents give and grant unto you, the said James Murray, full power and authority, with the advice & Consent of our said Council, to Erect, Constitute and Establish, such and so many Courts of Judicature and publick Justice within our said province under your Government as you & they shall think fit and necessary, for the hearing & determining of all causes as well Criminal as Civil according to Law and Equity and for awarding execution thereupon, with all reasonable & necessary powers, authorities, Fees, and priviledges belonging thereunto: as also to appoint and commissionate fit persons in the several parts of your Government to administer the oaths mentioned in the aforesaid act Intitled (an act for the further security of His Majesty's person & Government, and the succession of the Crown in the Heirs of the late Princess Sophia being protestants and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors) as also to Tender & administer the aforesaid declaration to such persons belonging to the said Courts as shall be obliged to take the same.

power to Commissionate fit persons to administer the Oaths appointed by Stat: 1. Geo: I, & the declaration agt popery to persons belonging to such Courts

Power to appoint Judges, Commissrs of Oyer & Terminer, Justices of the peace, Sherriffs & other officers of Justice—

And We do hereby grant unto you full power and authority to constitute and appoint judges, and in Cases requisite Commissioners of Oyer & Terminer, Justices of the peace, Sherriffs and other necessary Officers and ministers in our said Province for the better administration of Justice, and putting the Laws in Execution; and to administer or cause to be administered unto them such oath or Oaths as are usually given for the due Execution and performance of Offices & places and for clearing the truth in Judicial Causes.

power to pardon Crime

And We do hereby give and grant unto you full power and authority, when you shall see cause, or shall Judge any Offender or Offenders in Criminal matters, or for any Fines or Forfeitures due unto us, fit Objects of our Mercy, to pardon all such offenders and remit all such offences, Fines and Forfeitures; Treason and Willful murder only excepted; In which cases you shall likewise have power upon Exterordinary Occasions to Grant Reprives to the offenders untill and to the intent our Royal pleasure may be Known therein.

power of Collating to Ecclesiastical Benifices

And We do by these presents Give and Grant unto you full power and authority to Collate any person or persons to any Churches, Chappels, or other Ecclesiastical Benefices within our said province, as often as any of them shall happen to be void.

power to levy Troops and Employ them against Enemies pirates & Rebels.

And We do hereby give and grant unto you, the said James Murray, by yourself, or by your Captains and Commanders by you to be authorized, full power & Authority to Levy, Arm, Muster Command, and Employ all persons whatsoever, residing within our said province, and as occasion shall serve them to march Embark, or Transport from one place to another for the resisting and withstanding of all enemies, pirates, & Rebels both at land and sea: and to Transport such Forces to any of our Plantations in America, if necessity shall require for Defence of the same against the invasion or attempts of any of our Enemies; and such Enemies, pirates & Rebels, if there should be occasion, to pursue and prosecute in or out of the limits of

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And to execute Martial Law in time of War

our said province; and if it shall so please God, them to vanquish, apprehend and take; and being taken, according to law to put to death, or Keep and preserve alive, at your discretion: and to execute Martial Law in time of Invasion, War, or other times, when by Law it may be executed and to do and execute all and every other thing and things which to our Captain General & Governor in Chief doth, or of right ought to belong.

power with the Consent of the Council, to build Forts & Castles

And to Fortify & Furnish them with Arms &c., and to Demolish or Dismantle them.—

And We do hereby give and grant unto you full power and authority, by and with the advice and Consent of our said Council, to Erect, Raise, and build in our said province, such and so many Forts, Platforms, Castles, Cities, Borroughs, Towns, and Fortifications, as you, by the advice aforesaid, shall judge necessary: and the same or any of them, to Fortify and Furnish with Ordnance, ammunition, and all sorts of arms, fit and necessary for the security & defence of our said province: And by the advice aforesaid, the same again or any of them, to Demolish or Dismantle as may be most Convenient,—

power in time of War, to appoint Captains and other Officers of ships, and to grant them Commissions to execute the Law Martial according to the Stat: 22 Geo: 2.

And for as much as divers Mutinies & Disorders may happen by persons Shipped and Employed at sea during the time of War: And to the end, that such as shall be shipped and Employed at sea during the time of War may be better governed and ordered: We hereby give and grant unto you the said James Murray, full power and authority to Constitute and appoint Captains, Lieutenants, Masters of Ships, and other Commanders & officers, Commissions to execute the Law Martial during the time of War, according to the Directions of an act passed in the Twenty Second year of our late Royal Grand Father, intitled (an act for amending Explaining and Reducing into an act of Parliament, the Laws relating to the Government of His Majesty's Ships, Vessels, and Forces by Sea) and to use such proceedings, authorities, punishments, Corrections and Executions upon every Offender or Offenders, who shall be mutinous, Seditious, Disorderly, or any way unruly either at Sea or during the time of their abode or residence in any of the ports, Harbours, or Bays in our said Province, as the Case shall be found to require, according to Martial Law and and the said Directions during the time of War as aforesaid.—

This shall not affect any seamen or other persons on board ships Commissioned by the Admiralty, when they Commit offences either on the High Sea, or in any River, Creek or Haven.

Provided that nothing herein Contained shall be Construed to the enabling you, or any by your authority, to hold plea, or have any Jurisdiction, of any offence, Cause, matter or thing, Committed or done, upon the High sea, or within any of the havens, Rivers, or Creeks of our said province, under Your Government, by any Captain, Commander, Lieutenant, Master, Officer, Seaman, Soldier, or person Whatsoever, who shall be in actual service and pay, in or on board any of our ships of War, or other vessels, acting by immediate Commission or Warrant from our Commissioners for executing the office of High Admiral of Great Britain, or from our high Admiral of Great Britain for the time being; under the seal of our Admiralty. But that such Captain, Commander, Lieutenant, Master, Officer, Seaman, or Soldier, or other person, so offending shall be left to be proceeded against and Tried, as their offences shall require, either by Commission under our Great seal of this Kingdom, as the Statute of the Twenty eight of Henry the Eight directs, or by Commission from our said Commissioners for Executing the Office of High Admiral of Great Britain, or from our High Admiral of Great Britain for the time being according to the aforementioned Act Intitled (an act for amending, explaining and reducing into one act of parliament, the Laws relating to the Government of His Majesty's Ships, Vessels, and Forces by Sea) and not otherwise.—

But these persons shall be tried either by Commissions under the Great seal of Great Britain, according to the Stat. 28 Hen 8; or by Commission from the admiralty according to the Stat 22 Geo. 2

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But for offences Committed on Shore, these persons shall be tried & punished according to the laws of the place where the offence shall be committed.

Provided Nevertheless that all disorders and misdemeanors Committed on shore by any Captain, Commander, Lieutenant, Master, Officer, Seaman, Soldier, or other persons whatsoever belonging to any of our Ships of War, or other Vessels acting by immediate Commission or Warrant from our Commissioners for executing the Office of High Admiral of Great Britain, or from our High admiral of Great Britain for the time being; under the seal of our admiralty, may be Tried and punished, according to the laws of the place where any such disorders, offences, and misdemeanors shall be Committed on shore, notwithstanding such offender be in our actual service, and Born in our pay on board any such our ships of war, or other vessels acting by immediate Commission or Warrant from our Commissioners for Executing the Office of High Admiral of Great Britain, or from our Admiral of Great Britain for the time being as aforesaid; so as he shall not receive any protection for the avoiding of Justice for such offence Committed on shore from any pretence of his being employed in our service at sea.

power with the Consent of the Council to dispose of publick money for the support of the Government.

And our Further will & pleasure is that all publick monies raised, or which shall be raised, by any act hereafter to be made within our said province, be issued out by Warrants from you, by and with the advice & Consent of our Council as aforesaid for the support of the Government & not otherwise.—

power with the Consent of the Council to grant lands.

And We likewise give and grant unto you full power and authority, by and with the advice & Consent of our said Council to settle and agree with the inhabitants of our said province for such lands, Tenements and Hereditaments as now are or hereafter shall be in our power to dispose of, and them to grant to any person or persons upon such terms, and under such moderate Quit Rents, services, and acknowledgements to be thereupon reserved unto us, as you with the advice aforesaid shall think fit: which said grants are to pass and be sealed by our publick seal of our said province; and being entered upon Record by such officer or Officers as shall be appointed thereunto, shall be good and effectual in the Law against us, our Heirs and Successors.—

The grants to be under the Pubilck seal, and to be registered.

These grants must be made conformably to the Kings Instructions.

Provided the same be conformable to the Instructions herewith delivered to you, or to such other instructions as may hereafter be sent to you under our Signet & Sign Manual, or by our order in our Privy Council, Which instructions, or any articles Contained therein, or any such order made in our Privy Council, so far as the same shall relate to the Granting of Lands as aforesaid, shall from time to time be published in the province and Entered of record, in like manner as the Said Grants themselves are hereby Directed to be entered.

And these Instructions relating to the granting of Lands shall be published.

power with the Consent of the Council, to appoint fairs & markets, harbours & wharfs.

And We do hereby give you the said James Murray full power & authority to order Fairs, Marts, & Markets, and also such and so many Ports, Harbours, Bays, Havens, and other places for the conveniency and Security of shipping, and for the better loading & unloading of goods & Merchandizes, in such and so many places as, by and with the advice and Consent of our said Council, shall be thought fit and necessary.—

All officers Civil & military, and all other inhabitants of the province, are to be aiding and assisting to the Governor in the execution of his Commission & in case of the death or absence of the

And We do hereby require & Command all Officers and Ministers Civil & Military, and all other inhabitants of our said Province, to be obedient, aiding, and assisting unto you, the said James Murray in the Execution of this our Commission, and of the powers & Authorities therein Contained, and in Case of your Death or Absence from our said province & Government, to be obedient, aiding and assisting as aforesaid to the Commander in Chief for the time being, to whom we do therefore by these presents, give and grant all and

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Governor, to the Commander in Chief for the time being.

singular the powers and Authorities herein Granted, to be by him Executed & Enjoyed during our pleasure or untill your Arrival within our said province.

Who shall be Commander in Chief of the Province in case of the death or absence of the Governor.

And in Case of your Death or absence from our said province, our will and pleasure is, that our Lieutenant Governor of Montreal or Trois Rivières, According to the priority of their Commissions of Lieutenant Governors, do Execute our said Commission with all the powers and authorities therein mentioned as aforesaid, and in Case of the Death or absence of our Lieutenant Governor of Montreal and Trois Riviéres from our said province, and that there shall be no person within our said province appointed by us to be Lieutenant Governor or Commander in Chief of our said province, Our Will and pleasure is, that the Eldest Counsellor, who shall be at the time of your Death or absence, residing within our said province, shall take upon him the administration of the Government, and Execute our said Commission and Instructions and the several powers and Authorities therein Contained, in the same manner to all intents and purposes, as other our Governor or Commander in Chief should or ought to do in Case of your Absence, or untill your Return, or in all Cases untill our further pleasure be Known therein.—

This Office of Captain General and Governor in Chief to be held only during the Kings pleasure.

And We do hereby declare, ordain and appoint, that you the said James Murray, shall and may hold Execute and Enjoy the Office & place of our Captain General, and Governor in Chief in and over our said Province of Quebec, and all the Territories depending thereon, with all and singular the powers and authorities hereby Granted unto you, for & during our will and pleasure. In Witness Whereof, We have Caused these our Letters to be made patent, Witness our Self at Westminister the Twenty first Day of November, in the fourth Year of our Reign.

By Writ of privy Seal

(Signed)

YORKE & YORKE.

Recorded at the Treasury Chambers Whitehall the 28th Day of November 1763

(Signed)

T. TOMKYNS

Recorded in the Registry Office in Quebec the 7th Day of June 1766

(Signed)

J. GOLDFRAP D. Regr

INSTRUCTIONS TO GOVERNOR MURRAY.[1]

GEORGE R.

[L.S.]

Instructions to Our Trusty and Wellbeloved JAMES MURRAY, ESQ.r, Our Captain General and Governor in Chief in and over Our Province of Quebec in America, and of all Our Territories dependent thereupon. Given at Our Court at St James's the Seventh Day of December 1763 in the Fourth Year of Our Reign.

1. With these Our Instructions You will receive Our Commission under Our Great Seal of Great Britain, constituting You Our Captain General and Governor in Chief in and over Our Province of Quebec in America, bounded on the Labrador Coast by the River St John, and from thence by a Line drawn from the Head of that River through the Lake St John to the South End of the Lake Nipissin; from whence the said Line crossing the River St Lawrence and the Lake Champlain in forty five

[1] Copy from Public Record Office, Col. O. Plantations, 1763-1766: in Canadian Archives, M, 230, p. 1.

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Degrees of North Latitude, passes along the High Lands, which divide the Rivers that empty themselves into the said River S^t Lawrence, from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs and the Coast of the Gulph of S^t Lawrence to Cape Rosieres, and from thence crossing the Mouth of the River S^t Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River of S^t John: You are therefore to take upon You the Execution of the Office and Trust We have reposed in You, and the Administration of Government, and to do and execute all Things in due manner that shall belong to your Command, according to the several Powers and Authorities of Our said Commission under Our Great Seal of Great Britain, and these Our Instructions to You, or according to such further Powers and Instructions as shall at any Time hereafter be granted or appointed You under Our Signet and Sign Manual, or by Our Order in Our Privy Council.

2. And You are, with all due Solemnity, to cause Our said Commission to be published at Quebec, which We do appoint to be the Place of your Residence and the principal Seat of Government, in the Districts of Montreal and Trois Rivieres, and in such other parts of your Government as You shall think necessary and expedient, as soon as possible; which being done, You are in the next place to nominate and establish a Council for Our said Province, to assist You in the Administration of Government, which Council is, for the present, to be composed of the Persons, whom We have appointed to be Our Lieutenant Governors of Montreal and Trois Rivieres, Our Chief Justice of Our said Province, and the Surveyor General of Our Customs in America for the Northern District, and Eight other Persons to be chosen by You from amongst the most considerable of the Inhabitants of, or Persons of Property in Our said Province; which Persons so nominated and appointed by You as aforesaid, (Five of which We do hereby appoint to be a Quorum), are to be Our Council for Our said Province, and to have and enjoy all the Powers, Privilege and Authority usually exercised and enjoyed by the Members of Our Councils in Our other Plantations, and also such others as are contained in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to You; and they shall meet together at such Time or Times, Place or Places, as You, in your Discretion, shall think necessary and expedient: It is nevertheless Our Will and Pleasure, that the said Chief Justice, or Surveyor General of Our Customs, shall not be capable of taking the Administration of the Government upon the Death or Absence of You Our Governor, or the Commander in Chief for the Time being.

3. And You are forthwith to call Our said Council together, or such of them as can be conveniently assembled, and to cause Our said Commission to You to be read at such Meeting; which being done, You shall then take yourself, and also administer to Our Lieutenant Governors respectively, and to the Members of Our said Council, the Oaths mentioned in an Act, passed in the first Year of the Reign of His Majesty King George the First, intituled, "An Act for the further Security of His Majesty's "Person and Government, and the Succession of the Crown in the Heirs of the late "Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended "Prince of Wales, and his open and secret Abettors;"—as also to make and subscribe, and cause them to make and subscribe the Declaration mentioned in an Act of Parliament made in the Twenty fifth Year of the Reign of King Charles the Second, intituled, "An Act for preventing Dangers which may happen from Popish Recusants." And You and every one of Them are likewise to take an Oath for the due Execution of your and their Places and Trusts, with regard to your and their equal and impartial Administration of Justice;—and You are also to take the Oath required by an Act passed in the seventh and eighth Years of the Reign of King William the Third to be taken by Governors of Plantations, to do their utmost that the Laws relating to the Plantations be observed.

4. And You are forthwith to transmit unto Our Commissioners for Trade and Plantations, in order to be laid before Us for Our Approbation or Disallowance, the Names of the Members of the Council so to be appointed by You, as aforesaid; as also a List of the Names and Characters of Eight other Persons in Our said Province, whom You judge properly qualified to serve in that Station; to the End that, if any of

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the Persons appointed by You, as aforesaid, shall not be approved and confirmed by Us, under Our Signet and Sign Manual, the Place or Places of such Persons so disapproved may be forthwith supplied from the said List, or otherwise, as We shall think fit.

5. And if it shall at any time happen, that, by the Death, Departure out of Our said Province, Suspension of any of Our said Councillors, or otherwise, there shall be a Vacancy in Our said Council, Our Will and Pleasure is, that You signify the same to Our Commissioners for Trade and Plantations by the first Opportunity, that We may, under Our Sign Manual, constitute and appoint Others in their Stead; to which End, You are, whenever such Vacancy happens, to transmit to Our said Commissioners, in order to be laid before Us, the Names of three or more Persons, Inhabitants of Our said Province, whom You shall esteem best qualified for such Trust.

6. But that Our Affairs may not suffer for want of a due Number of Councillors, if ever it shall happen, that there be less than Seven residing in Our said Province, We do hereby give and grant unto You, the said James Murray, full Power and Authority to chuse as many Persons out of the principal Inhabitants of Our said Province, as will make up the full Number of the Council to be Seven, and no more; which Persons, so chosen and appointed by You, shall be, to all Intents and Purposes, Councillors in Our said Province, till either they shall be confirmed by Us, or, by the Nomination of Others by Us, under Our Signet and Sign Manual, Our said Council shall have Seven or more Persons in it.

7. And it is Our Will and Pleasure, that You do, and You are hereby authorized and impowered to suspend and remove any of the Members of Our said Council from sitting, voting, and assisting therein, if You shall find just Cause for so doing; (and also in like manner to suspend any of Our Lieutenant Governors of Our said Province from the Execution of their Commands), and to appoint Others in their Stead, until Our Pleasure shall be known. It is nevertheless Our Will and Pleasure that You do not suspend or remove any of the Lieutenant Governors of Our said Province respectively, or any of the Members of Our Council, when they shall have been confirmed by Us, as aforesaid, without good and sufficient Cause, nor without the Consent of the Majority of the said Council, signified in Council, after due Examination of the Charge against such Lieutenant Governor, or Councillor, and his Answer thereunto; and in case of Suspension of any of them, You are to cause your Reasons for so doing, together with the Charges and Proofs against such Person, and his Answer thereunto, to be duly entered upon the Council Books, and forthwith to transmit Copies thereof to Our Commissioners for Trade and Plantations, in order to be laid before Us; nevertheless if it should happen, that You should have Reasons for suspending any of the said Persons, not fit to be communicated to the Council, You may in that Case suspend such Person without the Consent of said Council; but You are thereupon immediately to send to Our Commissioners for Trade and Plantations, in order to be laid before Us, an Account of your Proceedings therein, together with your Reasons at large for such Suspension, as also your Reasons at large for not communicating the same to the Council; and Duplicates thereof by the next Opportunity.

8. Whereas We are sensible, that effectual Care ought to be taken to oblige the Members of the Council to a due Attendance therein, in order to prevent the many Inconveniencies that may happen from the Want of a Quorum of the Council, to transact Business as Occasion may require; It is Our Will and Pleasure, that if any of the Members of Our said Council shall hereafter absent themselves from the said Province, and continue absent above the Space of six Months together, without Leave from You, or from Our Commander in Chief of Our said Province for the time being, first obtained under your or his hand and seal; or shall remain absent for the Space of one Year, without Our Leave given them under Our Royal Signet and Sign Manual, their Place or Places in the said Council shall immediately thereupon become Void; and that, if any of the Members of Our said Council, then residing in the Province under your Government, shall hereafter wilfully absent themselves, when duly summoned, without a just and lawful Cause, and shall persist therein after Admonition, You suspend the said Councillors so absenting themselves, till Our further Pleasure be known, giving Us timely Notice thereof: And We do hereby will and require You, that

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this Our Royal Pleasure be signified to the several Members of Our Council aforesaid, and entered in the Council Books of the Province under your Government, as a standing Rule—

9. You are forthwith to communicate such and so many of these Our Instructions to Our said Council, wherein their Advice and Consent are mentioned to be requisite; as likewise all such others, from time to time, as You shall find convenient for Our Service to be imparted to them.

10. You are to permit the Members of Our said Council to have and enjoy Freedom of Debate and Vote, in all Affairs of public Concern that may be debated in Council.

11. And whereas it is directed, by Our Commission to You under Our great Seal, that so soon as the Situation and Circumstances of Our said Province will admit thereof, You shall, with the Advice of Our Council, summon and call a General Assembly of the Freeholders in Our said Province; You are therefore, as soon as the more pressing Affairs of Government will allow to give all possible attention to the carrying this important Object into Execution: But, as it may be impracticable for the present to form such an Establishment, You are in the mean time to make such Rules and Regulations, by the Advice of Our said Council, as shall appear to be necessary for the Peace, Order and good Government of Our said Province, taking Care that nothing be passed or done, that shall any ways tend to affect the Life, Limb or Liberty of the Subject, or to the imposing any Duties or Taxes; and that all such Rules and Regulations be transmitted to Us, by the first Opportunity after they are passed and made, for Our Approbation or Disallowance. And it is Our Will and Pleasure, that when an Assembly shall have been summoned and met, in such manner as You, in your Discretion, shall think most proper, or as shall be hereafter directed and appointed, the following Regulations be carefully observed in the framing and passing all such Laws, Statutes and Ordinances, as are to be passed by You, with the Advice and Consent of Our said Council and Assembly; Viz^t

That the Style of Enacting the said Laws, Statutes and Ordinances be by the Governor, Council, and Assembly, and no other;—

That each different Matter be provided for by a different Law, without including in one and the same Act such Things as have no proper Relation to each other;—

That no Clause be inserted in any Act or Ordinance, which shall be foreign to what the Title of it imports; and that no perpetual Clause be part of any temporary Law;—

That no Law or Ordinance whatever be suspended, altered, continued, revived, or repealed by general Words; but that the Title and Date of such Law or Ordinance be particularly mentioned in the enacting part;—

That no Law or Ordinance, respecting private Property, be passed without a Clause suspending it's Execution, until Our Royal Will and Pleasure is known; nor without a Saving of the Right of Us, Our Heirs and Successors, and of all Bodies politic and corporate, and of all other Persons, except such as are mentioned in the said Law or Ordinance, and those claiming by, from, and under them; and before such Law or Ordinance is passed, Proof must be made before You, in Council, and entered in the Council Books, that public Notification was made of the Party's Intention to apply for such Act in the several Parish Churches, where the Lands in Question lie, for three Sundays at least successively before any such Law or Ordinance shall be proposed; and You are to transmit, and annex to the said Law, or Ordinance, a Certificate under your hand, that the same passed through all the Forms abovementioned;—

That in all Laws or Ordinances for levying Money, or imposing Fines, Forfeitures or Penalties, express mention be made, that the same is granted or reserved to Us, Our Heirs and Successors, for the public Uses of the said Province, and the Support of the Government thereof, as by the said Law, or Ordinance shall be directed; and that a Clause be inserted, declaring, that the Money arising by the Operation of the said Law, or Ordinance shall be accounted for unto Us in this Kingdom, and to Our Commissioners of Our Treasury, or Our High Treasurer for the time being, and audited by Our Auditor General of Our Plantations, or his Deputy;—

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That all such Laws, Statutes and Ordinances be transmitted by You within three Months after their passing, or sooner, if Opportunity offers, to Our Commissioners for Trade and Plantations; that they be fairly abstracted in the Margents, and accompanied with very full and particular Observations upon each of them, that is to say, whether the same is introductive of a new Law, declaratory of a former Law, or does repeal a Law then before in being; and you are also to transmit, in the fullest manner, the Reasons and Occasion for enacting such Laws, or Ordinances, together with fair Copies of the Journals of the Proceedings of the Council and Assembly, which You are to require from the Clerks of the said Council and Assembly.

12. And to the end that nothing may be passed or done to the Prejudice of the true Interests of this Our Kingdom, the just Rights of Us, Our Heirs and Successors, or the Property of Our Subjects; it is Our express Will and Pleasure, that no Law whatever, which shall in any wise tend to affect the Commerce or Shipping of this Kingdom, or which shall any ways relate to the Rights and Prerogative of Our Crown, or the Property of Our Subjects, or which shall be of an unusual or extraordinary Nature, be finally ratified and assented to by You, until You shall have first transmitted a Draught of such Law, and shall have received Our Directions thereupon, unless You take care, that a Clause be inserted, suspending and deferring the Execution thereof, until Our Pleasure is known concerning the same.

13. And whereas Laws have formerly been enacted in several of Our Plantations in America for so short a time, that Our Royal Assent or Refusal thereof could not be had before the Time, for which such Laws were enacted, did expire; You shall not give your Assent to any Law, that shall be enacted for a less Time than two Years, except in Cases of imminent Necessity, or immediate temporary Expediency; and You shall not reenact any Law, to which Our Assent shall have been once refused, without express Leave for that purpose first obtained from Us, upon a full Representation by You to be made to Our Commissioners for Trade and Plantations, in order to be laid before Us, of the Reasons and Necessity for passing such Law; nor give your Assent to any Law for repealing any other Law, which shall have passed in your Government, and shall have received Our Royal Approbation, unless You take Care that there be a Clause inserted therein, suspending and deferring the Execution thereof, until Our Pleasure shall be known concerning the same.

14. And We do particularly require You to take Care, that fair Books of Accounts of all Receipts and Payments of all Publick Money be duly kept, and the Truth thereof attested upon Oath; and that all such Accounts be audited, and attested by Our Auditor General of Our Plantations, or his Deputy, who is to transmit Copies thereof to Our Commissioners of Our Treasury, or to Our High Treasurer, for the time being; and that You do, every half Year or oftener, send another Copy thereof, attested by yourself, to Our Commissioners for Trade and Plantations, and Duplicates thereof by the next Conveyance; in which Books shall be specified every particular Sum raised or disposed of, together with the Names of the Persons to whom any Payment shall be made; to the end We may be satisfied of the right and due Application of the Revenue of Our said Province, with the Probability of the Increase or Diminution of it under every Head and Article thereof.

15. And whereas the Members of several Assemblies in the Plantations have frequently assumed to themselves Privileges no ways belonging to them, especially of being protected from Suits at Law during the Term they remain of the Assembly, to the great Prejudice of their Creditors and the Obstruction of Justice; and some Assemblies have presumed to adjourn themselves at Pleasure, without Leave from Our Governor first obtained; and Others have taken upon them the sole framing of Money Bills, refusing to let the Council alter or amend the same; all which Practices are very detrimental to Our Prerogative; If therefore You find, that the Members of the Assembly of Our Province of Quebec insist upon any of the said Privileges, You are to signify to them that it is Our express Will and Pleasure, that You do not allow any Protection to any Member of the Council or Assembly, further than in their Persons, and that only during the Sitting of the Assembly; and that You do not allow them to adjourn themselves otherwise than de die in diem, except Sundays and Holy-days,

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without Leave from You, or the Commander in Chief for the time being, first obtained; It is also Our further Pleasure, that the Council have the like Power of framing Money Bills as the Assembly.

16. And whereas by Our aforesaid Commission under Our Great Seal of Great Britain, You are authorized and impowered, with the Advice and Consent of Our Council, to constitute and appoint Courts of Judicature and Justice; it is therefore Our Will and Pleasure, that You do, as soon as possible, apply your Attention to these great and important Objects; and that, in forming the necessary Establishments for this purpose, You do consider what has taken place in this respect in Our other Colonies in America, more particularly in Our Colony of Nova Scotia.

17. And whereas it is for the Ease, Satisfaction and Benefit of all Our Subjects, that Appeals should be allowed, in all Civil Causes, from the Courts in Our Plantations; it is therefore Our Will and Pleasure, that, when the several Courts and Offices necessary for the Administration of Justice shall have been settled, appointed and confirmed, in Consequence of the Power vested in You by Our Commission under Our Great Seal and by these Our Instructions, You do, as near as different Circumstances will admit, conform yourself to the Regulations prescribed in the Instructions given to Our Governor of Nova Scotia in respect to such Appeals, Copies of which Instructions are hereunto annexed.

18. You are, with the Advice and Consent of Our Council in the Province under your Government, to take especial Care to regulate all Salaries and Fees belonging to Places, or paid upon Emergencies, that they be within the Bounds of Moderation, and that no Exaction be made on any Occasion whatsoever; as also that Tables of all Fees be publickly hung up in all Places where such Fees are to be paid; and You are to transmit Copies of all such Tables of Fees to Our Commissioners for Trade and Plantations, in order to be laid before Us.

19. It is Our express Will and Pleasure, that You do, by the first Opportunity, and with all convenient Speed, transmit unto Us, by Our Commissioners for Trade and Plantations, authentic Copies of all Acts, Orders, Grants, Commissions or other Powers, by Virtue of which any Courts, Offices, Jurisdictions, Pleas, Authorities, Fees and Privileges have been settled or established, for Our Confirmation or Disallowance; and in case all or any of them shall, at any time or times, be disallowed and not approved, then such and so many as shall be so disallowed and not approved, and so signified by Us, shall cease, determine, and be no longer continued or put in Practice.

20. You shall not appoint any Person to be a Judge or Justice of the Peace, without the Advice and Consent of the Majority of the Members of Our Council, present in Council; nor shall You execute yourself, or by Deputy, any of the said Offices; and it is Our further Will and Pleasure, that all Commissions, to be granted by You, to any Person or Persons to be Judges or Justices of the Peace, or other necessary Officers, be granted during Pleasure only.

21. You shall not displace any of the Judges, Justices of Peace, or other Officers or Ministers, without good and sufficient Cause, which You shall signify in the fullest and most distinct manner to Our Commissioners for Trade and Plantations, in order to be laid before Us, by the first Opportunity after such Removals.

22. And whereas frequent Complaints have heretofore been made of great Delays and undue Proceedings in the Courts of Justice in several of Our Plantations, whereby many of Our good Subjects have very much suffered; and it being of the greatest Importance to Our Service, and to the Welfare of Our Plantations, that Justice be every where speedily and duly administered, and that all Disorders, Delays, and other undue Practices in the Administration thereof, be effectually prevented; We do particularly require You to take especial Care, that in all Courts, where You are authorized to preside, Justice be impartially administered; and that in all other Courts, established within Our said Province, all Judges, and other Persons therein concerned, do likewise perform their several Duties without any Delay or Partiality.

23. You are to take Care, that all Writs be issued in Our Name throughout the Province under your Government.

24. Whereas there are several Offices in Our Plantations granted under the Great Seal of Great Britain, and Our Service may be very much prejudiced by reason of the Absence of the Patentees, and by their appointing Deputies not fit to officiate in their Stead; You are therefore to inspect such of the said Offices as are in the Province under your Government, and to enquire into the Capacity and Behaviour of the Persons exercising them, and to report thereupon, to Our Commissioners for Trade and Plantations, what you think fit to be done or altered in relation thereunto; and you are, upon the Misbehaviour of any of the said Patentees or their Deputies, to suspend them from the Execution of their Office, till you shall have represented the whole Matter unto Us, and received Our Directions therein; And in case of the Death of any such Deputy, it is Our express Will and Pleasure, that You take Care that the Person appointed to execute the Place, until the Patentee can be informed thereof and appoint another Deputy, do give sufficient Security to the Patentee, or, in case of Suspension, to the Person suspended, to be answerable to him for the Profits accruing during such Interval by Death, or during such Suspension, in case We shall think fit to restore the Person suspended to his Place again. It is nevertheless Our Will and Pleasure, that the Person executing the Place during such Interval by Death or Suspension, shall, for his Encouragement, receive the same Profits as the Person dead, or suspended did receive; And it is Our further Will and Pleasure, that, in case of a Suspension of a Patentee, the Person appointed by you to exercise the Office during such Suspension, shall receive a Moiety of the Profits which would otherwise become due to such Patentee, giving Security to such Patentee to be answerable to him for the other Moiety, in case We shall think fit to restore him to his Office again; And it is Our further Will and Pleasure, that you do countenance and give all due Encouragement to all Our Patent Officers in the Enjoyment of their legal and accustomed Fees, Rights, Privileges and Emoluments, according to the true Intent and Meaning of their Patents.

25. You shall not, by Colour of any Power or Authority hereby or otherwise granted, or mentioned to be granted unto you, take upon you to give, grant or dispose of any Office or Place within Our said Province, which now is or shall be granted under the Great Seal of this Kingdom, or to which any Person is or shall be appointed by Warrant under Our Signet and Sign Manual, any further than that you may, upon the Vacancy of any such Office or Place, or upon the Suspension of any such Officer by You, as aforesaid, put in any fit Person to officiate in the Interval, till you shall have represented the Matter unto Our Commissioners for Trade and Plantations, in order to be laid before Us, as aforesaid, (which You are to do by the first Opportunity,) and till the said Office or Place be disposed of by Us, Our Heirs or Successors, under the Great Seal of this Kingdom, or until some Person shall be appointed thereto by Warrant under Our Signet and Sign Manual, or Our further Directions be given therein.

26. And whereas several Complaints have been made by the Surveyor General, and other Officers of Our Customs in Our Plantations in America, that they have frequently been obliged to serve as Jurors, and personally to appear in Arms whenever the Militia is drawn out, and thereby are much hindered in the Execution of their Employments; Our Will and Pleasure is, that You take effectual Care, and give the necessary Directions, that the several Officers of Our Customs be excused and exempted from serving on any Juries, or personally appearing in Arms in the Militia, unless in case of absolute Necessity, or serving any parochial Offices, which may hinder them in the Execution of their Duty.

27. And whereas the Surveyor General of Our Customs in the Plantations are impowered, in case of the Vacancy of any of Our Offices of the Customs by Death, Removal, or otherwise, to appoint other Persons to execute such Offices, until they receive Directions from Our Commissioners of the Treasury, or Our High Treasurer, or Commissioners of Our Customs, for the time being; but in regard the Districts of Our said Surveyors General are very extensive, and that they are required at proper times to visit the Officers in the several Governments under their Inspection; and that it might happen that some of the Officers of Our Customs in the Province under your Government may die, at the Time when the Surveyor General is absent in some distant

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Part of his District, so that he cannot receive Advice of such Officer's Death within a reasonable Time, and thereby make Provision for carrying on the Service, by appointing some other Person in the room of such Officer who may happen to die; therefore, that there be no Delay given on such Occasion to the Masters of Ships or Merchants in their Dispatches, it is Our further Will and Pleasure, in case of such Absence of the Surveyor General, or if he should happen to die, and in such Cases only, that, upon the Death of any Collector of Our Customs within Our said Province, You, or, in your Absence, our Lieutenant Governor or Commander in Chief, shall make Choice of a Person of known Loyalty, Experience, Diligence and Fidelity, to be Employed in such Collector's room, for the Purposes aforesaid, until the Surveyor General of Our Customs shall be advised thereof, and appoint another to succeed in such Place, and that further Directions shall be given therein by Our Commissioners of Our Treasury, or Our High Treasurer, or by the Commissioners of Our Customs, for the time being, which shall be first signified; taking care that You do not, under any Pretence of this Instruction, interfere with the Powers and Authorities given by the Commissioners of Our Customs to the said Surveyors General, when they are able to put the same in Execution.

28. And whereas We have stipulated, by the late Definitive Treaty of Peace concluded at Paris the 10th Day of February 1763, to grant the Liberty of the Catholick Religion to the Inhabitants of Canada, and that We will consequently give the most precise and most effectual Orders, that Our new Roman Catholick Subjects in that Province may profess the Worship of their Religion, according to the Rites of the Romish Church, as far as the Laws of Great Britain permit; It is therefore Our Will and Pleasure, that you do, in all things regarding the said Inhabitants, conform with great Exactness to the Stipulations of the said Treaty in this respect.

29. You are, as soon as possible, to summon the Inhabitants to meet together, at such Time or Times, Place or Places, as you shall find most convenient, in order to take the Oath of Allegiance, and make and subscribe the Declaration of Abjuration mentioned in the aforesaid Act passed in the first Year of the Reign of King George the First, for the further Security of His Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors; which Oath shall be administered to them by such Person or Persons as you shall commissionate for such Purpose; and in case any of the said French Inhabitants shall refuse to take the said Oath, and make and subscribe the Declaration of Abjuration, as aforesaid, You are to cause them forthwith to depart out of Our said Government.

30. And it is Our further Will and Pleasure, that all such Inhabitants, professing the Religion of the Romish Church, do, at all such Meetings, or at such other Time or Times as You shall think proper, and in the Manner you shall think least alarming and inconvenient to the said Inhabitants, deliver in upon Oath an exact Account of all Arms and Ammunition, of every Sort in their actual Possession, and so, from time to time, of what they shall receive into their Possession, as aforesaid.

31. You are as soon as possible to transmit to Us, by Our Commissioners for Trade and Plantations, an exact and particular Account of the Nature and Constitution of the several Religious Communities of the Romish Church, their Rights, Claims, Privileges and Property, and also the Number, Situation and Revenue of the several Churches heretofore established in Our said Province, together with the Number of Priests or Curates officiating in such Churches.

32. You are not to admit of any Ecclesiastical Jurisdiction of the See of Rome, or any other foreign Ecclesiastical Jurisdiction whatsoever in the Province under your Government.

33. And to the End that the Church of England may be established both in Principles and Practice, and that the said Inhabitants may by Degrees be induced to embrace the Protestant Religion, and their Children be brought up in the Principles of it; We do hereby declare it to be Our Intention, when the said Province shall have been accurately surveyed, and divided into Townships, Districts, Precincts or Parishes, in such manner as shall be hereinafter directed, all possible Encouragement shall be

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given to the erecting Protestant Schools in the said Districts, Townships and Precincts, by settling, appointing and allotting proper Quantities of Land for that Purpose, and also for a Glebe and Maintenance for a Protestant Minister and Protestant School-Masters; and you are to consider and report to Us, by Our Commissioners for Trade and Plantations, by what other Means the Protestant Religion may be promoted, established and encouraged in Our Province under your Government.

34. And You are to take especial Care, that God Almighty be devoutly and duly served throughout your Government, the Book of Common Prayer, as by Law established, read each Sunday and Holyday, and the blessed Sacrament administered according to the Rites of the Church of England.

35. You are not to prefer any Protestant Minister to any Ecclesiastical Benefice in the Province under your Government, without a Certificate from the Right Reverend Father in God the Lord Bishop of London, of his being conformable to the Doctrine and Discipline of the Church of England, and of a good Life and Conversation; And if any Person hereafter preferred to a Benefice shall appear to you to give Scandal, either by his Doctrine or Manners, you are to use the best Means for his Removal.

36. You are to give Orders forthwith, that every Orthodox Minister within your Government be one of the Vestry in his respective Parish; and that no Vestry be held without him, except in case of Sickness, or, after Notice of a Vestry summoned, he omit to come.

37. And to the End that the Ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government, as far as conveniently may be, We do think fit, that You give all Countenance and Encouragement to the Exercise of the same, excepting only the collating to Benefices, granting Licences for Marriage, and Probates of Wills, which We have reserved to You, Our Governor, and to the Commander in Chief of Our said Province for the Time being.

38. And We do further direct, that no Schoolmaster, who shall arrive in Our said Province from this Kingdom, be henceforward permitted to keep School, without the Licence of the said Lord Bishop of London; and that no other Person now there, or that shall come from other Parts, shall be admitted to keep School in your Government, without your Licence first obtained.

39. And You are to take especial Care, that a Table of Marriages, established by the Canons of the Church of England, be hung up in all Places of publick Worship, according to the Rites of the Church of England.

40. And it is Our further Will and Pleasure, that, in order to suppress, as much as in you lies, every Species of Vice and Immorality, You forthwith, do cause all Laws already made against Blasphemy, Profaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's Day, Swearing and Drunkenness, to be vigorously put in Execution in every part of your Government; And that you take due Care for the Punishment of these, and every other Vice and Immorality, by Presentment upon Oath to be made to the Temporal Courts, by the Church Wardens of the several Parishes, at proper Times of the year to be appointed for that Purpose; and, for the further Discouragement of Vice, and Encouragement of Virtue and good living, (that by such Examples the Infidels may be invited and persuaded to embrace the Christian Religion.) You are not to admit any Persons to publick Trusts and Employments in the Province under your Government, whose Ill-Fame and Conversation may occasion Scandal.

41. And whereas it is stipulated by the aforesaid Treaty concluded at Paris the 10th Day of February 1763, that the French Inhabitants, or Others, who have been Subjects of the Most Christian King in Canada, may retire with all Freedom and Safety wherever they shall think proper, and may sell their Estates, provided it be to Our Subjects, and bring away their Effects, as well as their Persons, without being restrained in their Emigration under any Pretence whatsoever, except that of Debts, or criminal Prosecution, and that the Time limited for the Emigration shall be fixed to the Space of Eighteen Months, to be computed from the Day of the Exchange of the Ratifications of the Treaty; You are therefore in all things to conform yourself to this Stipulation, and to take care, that such of the French Inhabitants as intend to remove within the Time limited, be not obstructed or impeded, provided they do not sell their Estates to Others

than His Majesty's Subjects, and that, so long as they remain under your Government, they do in all things conform thereto in like manner as Our other Subjects.

42. And it is Our further Will and Pleasure, that all and every the French Inhabitants in Our said Province, who are now possessed of Lands within the said Province, in Virtue of Grants or Concessions made before the signing of the Preliminary Articles of Peace on the third Day of November 1762 ; do, within such limited Time as you in your Discretion shall think fit, register the several Grants, or other Deeds or Titles, by which they hold or claim such Lands, in the Secretary's Office ; which said Grants, Deeds or other Titles, shall be entered at large in the said Office, so that the particular Quantity of Land, it's Site and Extent, the Conditions upon which it is granted, either as to Rents, Services, or Cultivation, may appear fully and at length.

43. And in case it shall appear, upon a strict and accurate Examination of the said Grants and Title Deeds, to be taken in such manner as You shall think proper, that any of the Grantees, or Persons claiming Lands under such Grants and Title Deeds, are in Possession of more Land than is contained within such Grants or other Concessions ; or that the Terms and Conditions, upon which the Lands were granted, have not been complied with, agreeable to what is stipulated in such Grants or Concesssions ; It is Our Will and Pleasure, that you forthwith represent the same to Us, by Our Commissioners for Trade and Plantations, to the End that you may receive such Directions thereupon, as the Nature and Circumstances of the Case shall appear to require.

44. And whereas it is necessary, in order to the advantageous and effectual Settlement of Our said Province, that the true State of it should be fully known ; You are therefore, as soon as conveniently may be, to cause an accurate Survey to be made of the said Province by such able and skilful Person as is or shall be appointed for that Service, who is to report to you in writing, for your Judgment in the Measures which you may in general pursue for the making of Settlements, not only the Nature and Quality of the Soil and Climate, the Rivers, Bays and Harbours, and every other Circumstance attending the natural State of it ; but also his opinion, in what manner it may be most conveniently laid out into Counties, and to annex to his Report a Map of such Survey, with the several Divisions proposed marked upon it : But as the Making such Survey will be a Work of great Length, You are in the meantime to carry on Settlements upon that Plan, which shall appear to you to be most expedient from the best Information You can collect.

45. And whereas it has been found by Experience, that the settling Planters in Townships hath very much redounded to their Advantage, not only with respect to the Assistance they have been able to afford Each other in their civil Concerns, but likewise with regard to the Security they have thereby acquired against the Insults and Incursions of neighbouring Indians, or other Enemies ; You are therefore to lay out Townships of a convenient Size and Extent in such Places, as you, in your Discretion, shall judge most proper. And it is Our Will and Pleasure, that each Township do consist of about Twenty Thousand Acres, having, as far as may be, natural Boundaries extending up into the Country, and comprehending a necessary Part of the River of S^t Lawrence, where it can be conveniently had.

46. You are also to cause a proper Place in the most convenient Part of each Township, to be marked out for building a Town sufficient to contain such a Number of Families as you shall judge proper to settle there, with Town and pasture Lots convenient to each Tenement, taking Care, that the said Town be laid out upon, or, as near as conveniently may be, to some navigable River, or the Sea Coast ; And you are also to reserve to Us proper Quantities of Land in each Township for the following Purposes, viz ; For erecting Fortifications, and Barracks, where necessary, or for other military or naval Services, and more particularly for the Growth and Production of Naval Timber, if there are any Wood-Lands fit for that Purpose.

47. And it is Our further Will and Pleasure, that a particular Spot, in, or as near each Town as possible, be set apart for the building a Church, and four Hundred Acres adjacent thereto allotted for the Maintenance of a Minister, and two Hundred for a Schoolmaster.

48. And you are to give strict Orders to the Surveyors, whom you shall employ to mark out the said Townships and Towns, to make Returns to you of their Surveys as soon as possible, with a particular Description of each Township, and the Nature of the Soil within the same.

49. And You are to oblige all such Persons as shall be appointed to be Surveyors of the said Lands in each Township, to take an Oath for the due Performance of their Offices, and for obliging them to make exact Surveys of all Lands required to be set out.

50. And whereas nothing can more effectually tend to the speedy settling Our said Colony, the Security of the Property of Our Subjects, and the Advancement of Our Revenue, than the disposing of such Lands as are Our Property upon reasonable Terms, and the establishing a regular and proper Method of proceeding with respect to the passing of Grants of such Land; It is therefore Our Will and Pleasure, that all and every Person and Persons, who shall apply to You for any Grant or Grants of Land, shall, previous to their obtaining the same, make it appear before you in Council, that they are in a Condition to cultivate and improve the same, by settling thereon, in Proportion to the Quantity of Acres desired, a sufficient Number of White Persons and Negroes; And in case you shall, upon a Consideration of the Circumstances of the Person or Persons applying for such Grants, think it adviseable to pass the same, in such Case You are to cause a Warrant to be drawn up, directed to the Surveyor General, or other proper Officers, impowering him or them to make a faithful and exact Survey of the Lands so petitioned for, and to return the said Warrant within six Months at furthest from the Date thereof, with a Plot or Description of the Lands so surveyed thereunto annexed; Provided that you do take Care, that before any such Warrant is issued, as aforesaid, a Docquet thereof be entered in the Auditor's and Register's Office: And when the Warrant shall be returned by the said Surveyor, or other proper Officer, the Grant shall be made out in due Form, and the Terms and Conditions required by these Our Instructions be particularly and expressly mentioned in the respective Grants. And it is Our Will and Pleasure, that the said Grants shall be registered within six Months from the Date thereof in the Register's Office there, and a Docquet thereof be also entered in Our Auditor's Office there, in Case such Establishment shall take Place in Our said Province, or that, in Default thereof, such Grant shall be void; Copies of all which Entries shall be returned regularly, by the proper Officer, to Our Commissioners of Our Treasury and to Our Commissioners for Trade and Plantations, within six Months from the Date thereof.

51. And whereas great Inconveniences have arisen in many of Our Colonies in America from the granting excessive Quantities of Land to particular Persons, who have never cultivated or settled it, and have thereby prevented Others more industrious from improving the same; in order therefore to prevent the like Inconveniences for the future, You are to take especial Care, that in all Grants to be made by you, by and with the Advice and Consent of Our Council, to Persons applying for the same, the Quantity be in Proportion to their Ability to cultivate; And you are hereby directed to observe the following Directions and Regulations in all Grants to be made by you; Viz'

That one hundred Acres of Land be granted to every Person being Master or Mistress of a Family, for himself or herself, and fifty Acres for every white or black Man, Woman or Child, of which such Person's Family shall consist, at the actual Time of making the Grant; and in case any Person applying to you for Grants of Land shall be desirous of taking up a larger Quantity than the actual Number of Persons in his or her Family would intitle such Persons to take up; it is Our Will and Pleasure, and you are hereby allowed and permitted, to grant unto every such Person or Persons, such further Quantity of Land as they may desire, not exceeding one Thousand Acres over and above what they are intitled to by the Number of Persons in their respective Families;—Provided it shall appear to you, that they are in a Condition and Intention to cultivate the same; and provided also, that they do pay to the Receiver of Our Quit Rents, or to such other Officer as shall be appointed to receive the same, the Sum of five Shillings only for every fifty Acres, so granted, on the Day of the Date of the Grant;—

That all Grantees be subject to the payment of two Shillings Sterling for every Hundred Acres, to commence at the Expiration of two years from the Date of such Grant, and to be paid yearly and every Year, or in Default of such payment, the Grant is to be void ;—

That every Grantee, upon giving Proof that he or she has fulfilled the Terms and Conditions of his or her Grant, shall be entitled to another Grant, in the Proportion and upon the conditions abovementioned ;—

That for every Fifty Acres of Land accounted plantable, each Patentee shall be obliged, within three years after the Date of his Patent, to clear and work three Acres at the least, in that part of his Tract which he shall judge most convenient and advantageous ; or else to clear and drain three Acres of swampy or sunken Grounds, or drain three Acres of Marsh, if any such be within the Bounds of his Grant ;—

That for every Fifty Acres of Land accounted barren, every Patentee shall be obliged to put and keep on his Land, within three years after the Date of his Grant, three neat Cattle ; which Number he shall be obliged to continue on his Land, until three Acres for every Fifty be fully cleared and improved ;—

That if any Person shall take up a Tract of Land, wherein there shall be no Part fit for present Cultivation without manuring and improving the same, every such Grantee shall be obliged, within three years from the Date of his Grant, to erect on some part of his Land one good Dwelling-House, to contain at least twenty Feet in Length, and sixteen Feet in Breadth ; and also to put on his Land the like Number of three neat Cattle for every fifty Acres ;—

That if any Person, who shall take up any stony or rocky Grounds not fit for planting or pasture, shall, within three years after the passing of his Grant, begin to employ thereon, and so continue to work, for three years then next ensuing, in digging any Stone Quarry or other Mine, one good and able Hand for every hundred Acres of such Tract, it shall be accounted a sufficient Cultivation and Improvement ;—

That every three Acres, which shall be cleared and worked, as aforesaid, and every three Acres, which shall be cleared and drained, as aforesaid, shall be accounted a sufficient Seating, Planting, Cultivation and Improvement, to save for ever from Forfeiture Fifty Acres of Land in any Part of the Tract contained within the same Patent ; and the Patentee shall be at Liberty to withdraw his Stock, or to forbear working in any Quarry or Mine, in Proportion to such Cultivation and Improvement, as shall be made upon the plantable Lands, or upon the Swamps, sunken Grounds and Marshes, which shall be included in the same Patent ;—

That when any Person, who shall hereafter take up and patent any Lands, shall have seated, planted and cultivated, or improved the said Land, or any part of it, according to the Directions and Conditions abovementioned, such Patentee may make Proof of such Seating, Planting, Cultivation and Improvement in the general Court, or in the Court of the County, District or Precinct, where such Lands shall lie, and have such Proof certified to the Register's Office, and there entered with the Record of the said Patent, a Copy of which shall be admitted, on any Trial, to prove the seating and planting of such Land ;—

And lastly, in order to ascertain the true Quantity of plantable and barren Land contained in each Grant hereafter to be made within Our said Province, you are to take especial Care, that, in all Surveys hereafter to be made, every Surveyor be required and enjoyned to take particular Notice, according to the best of his Judgment and Understanding, how much of the Land so surveyed is plantable, and how much of it is barren and unfit for Cultivation ; and accordingly to insert in the Survey and Plott by him to be returned into the Register's Office, the true Quantity of each kind of Land.

52. And it is Our further Will and Pleasure, that in all Grants of Land to be made by You, as aforesaid, regard be had to the profitable and unprofitable Acres, so that each Grantee may have a proportionable Number of one Sort and the other ; as likewise that the Breadth of each Tract of Land, to be hereafter granted, be one Third of the Length of such Tract ; and that the Length of each Tract do not extend along the Banks of any River, but into the main Land, that thereby the said Grantees may

have each a convenient Share of what Accommodation the said River may afford for Navigation or otherwise.

53. And whereas it hath been represented to Us, that many Parts of the Province under your Government are particularly adapted to the Growth and Culture of Hemp and Flax; It is therefore Our Will and Pleasure, that, in all Surveys of Land for Settlement, the Surveyor be directed to report, whether there is any, or what Quantity of Lands contained within such Survey, fit for the Production of Hemp and Flax; And You are to take particular Care to insert a Clause in every Grant of Land, where any part thereof is fit for such Production, obliging the Grantee annually to sow a proportionable Part of his Grant with Hemp or Flax Seed.

54. And whereas it hath been further represented to Us, that a great part of the Country in the Neighbourhood of Lake Champlain, and between that Lake and the River S^t Lawrence, abounds with Woods producing Trees fit for Masting for Our Royal Navy, and other useful and necessary Timber for Naval Construction; You are therefore expressly directed and required to cause such Parts of the said Country, or any other within your Government, that shall appear upon a Survey to abound with such Trees, and shall lye convenient for Water Carriage, to be reserved to Us, and to use your utmost Endeavour to prevent any Waste being committed upon the said Tracts, by punishing in due Course of Law any Persons who shall cut down or destroy any Trees growing thereon; and you are to consider and advise with Our Council, whether some Regulation that shall prevent any Saw Mills whatever from being erected within your Government, without a Licence from you, or the Commander in Chief of Our said Province for the Time being, may not be a Means of preventing all Waste and Destruction in such Tracts of Land as shall be reserved to Us for the Purposes aforesaid.

55. And whereas it appears from the Representations of Our Governor of the District of Trois Rivieres, that the Iron Works at S^t Maurice in that District are of great Consequence to Our Service; It is therefore Our further Will and Pleasure, that no part of the Lands, upon which the said Iron Works were carried on, or from which the Ore used in such Works was procured, or which shall appear to be necessary and convenient for that Establishment, either in respect to a free Passage to the River S^t Lawrence, or for producing a necessary Supply of Wood, Corn and Hay, or for Pasture for Cattle, be granted to any private Person whatever; and also that as large a District of Land as conveniently may be, adjacent to and lying round the said Iron Works, over and above what may be necessary for the above Purposes, be reserved for Our Use, to be disposed of in such manner as We shall hereafter direct and appoint.

56. And whereas it is necessary, that all Persons who may be desirous of settling in Our said Province, should be fully informed of the Terms and Conditions, upon which Lands will be granted in Our said Province; You are therefore, as soon as possible, to cause a Publication to be made, by Proclamation or otherwise, as you in your Discretion shall think most adviseable, of all and every the foregoing Terms, Conditions and Regulations of every kind, respecting the Grants of Lands; in which Proclamation it may be expedient to add some short Description of the natural Advantages of the Soil, and Climate, and it's peculiar Conveniences for Trade and Navigation; and you are to take such Steps as you shall think proper for the publishing such Proclamation in all the Colonies in North America.

57. And it is Our further Will and Pleasure, that all the foregoing Instructions to you, as well as any which You may hereafter receive, relative to the Form and Method of passing Grants of Lands, and the Terms and Conditions to be annexed to such Grants, be entered upon Record, with the Grants themselves, for the Information and Satisfaction of all Parties whatever, that may be concerned therein.

58. And it is Our further Will and Pleasure, that you do consider of a proper and effectual Method of collecting, receiving and accounting for Our Quit Rents, whereby all Frauds, Concealment, Irregularity or Neglect therein may be prevented, and whereby the Receipt thereof may be effectually checked and controlled; And if it shall appear necessary to pass an Act for the more effectually ascertaining, and the more speedily and regularly collecting Our Quit Rents, you are to prepare the Heads of such

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a Bill, as you shall think may most effectually conduce to the procuring the good Ends proposed, and to transmit the same to Our Commissioners for Trade and Plantations, in order to be laid before Us for Our further Directions therein.

59. And it is Our further Will and Pleasure, that the Surveyor General, or such other Person or Persons as you shall think proper to appoint, do, once in every year or oftener as Occasion shall require, inspect the State of all Grants of Lands made by you, and make report thereof to you in Writing, specifying whether the Conditions therein contained have or have not been complied with, or what Progress has been made towards fulfilling the same; and you are annually to transmit Copies of such Reports to Our Commissioners for Trade and Plantations.

60. And whereas Our Province of Quebec is in part inhabited and possessed by several Nations and Tribes of Indians, with whom it is both necessary and expedient to cultivate and maintain a strict Friendship and good Correspondence, so that they may be induced by Degrees, not only to be good Neighbours to Our Subjects, but likewise themselves to become good Subjects to Us; You are therefore, as soon as you conveniently can, to appoint a proper Person or Persons to assemble, and treat with the said Indians, promising and assuring them of Protection and Friendship on Our part, and delivering them such Presents, as shall be sent to you for that purpose.

61. And you are to inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their Lives, and the Rules and Constitutions, by which they are governed or regulated. And You are upon no Account to molest or disturb them in the Possession of such Parts of the said Province, as they at present occupy or possess; but to use the best means You can for conciliating their Affections, and uniting them to Our Government, reporting to Us, by Our Commissioners for Trade and Plantations, whatever Information you can collect with respect to these People, and the whole of your Proceedings with them.

62. Whereas We have, by Our Proclamation dated the seventh day of October in the Third year of Our Reign, strictly forbid, on pain of Our Displeasure, all Our Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands reserved to the several Nations of Indians, with whom We are connected, and who live under Our Protection, without Our especial Leave for that Purpose first obtained; It is Our express Will and Pleasure, that you take the most effectual Care that Our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon your Government be carried on in the Manner, and under the Regulations prescribed in Our said Proclamation.

63. You are to use your best Endeavours in improving the Trade of those Parts, by settling such Orders and Regulations therein, with the Advice of Our said Council, as may be most acceptable to the Generality of the Inhabitants. And it is Our express Will and Pleasure, that you do not, upon any Pretence whatever, upon pain of Our highest Displeasure, give your Assent to any Law or Laws for setting up any Manufactures and carrying on any Trades, which are hurtful and prejudicial to this Kingdom; and that You do use your utmost Endeavours to discourage, discountenance and restrain any Attempts which may be made to set up such Manufactures, or establish any such Trades.

64. Whereas by the 5th and 6th Articles of the Treaty of Peace and Neutrality in America,[1] concluded between England and France the 6th-16 Day of November 1686, the Subjects and Inhabitants of each Kingdom are prohibited to trade and fish in all Places possessed, or which shall be possessed by the other in America; and if any Ships shall be found trading contrary to the said Treaty, upon due Proof the said Ships shall be confiscated: but in case the subjects of either King shall be forced by Stress of Weather, Enemies, or other Necessity into the Ports of the other in America, they shall be treated with Humanity and Kindness, and may provide themselves with Victuals, and other Things necessary for their Sustenance, and the Reparation of their Ships, at reasonable Rates; provided they do not break bulk, nor carry any Goods

1 This Treaty of London, had reference only to the dominions of the two Crowns in America. It is given in full in *Collection de Documents Relatifs à L'Histoire de la Nouvelle-France*. Vol. I, p. 372.

out of their Ships, exposing them to Sale, nor receive any Merchandize on board, under Penalty of Confiscation of Ship and Goods; It is therefore Our Will and Pleasure, that You signify to Our Subjects under your Government the Purport and Intent of the abovesaid two Articles; and that you take particular Care, that none of the French Subjects be allowed to trade from their said Settlements to the Province under your Government, or to fish upon the Coast thereof.

65. And it is Our Will and Pleasure, that You do not dispose of any Forfeitures or Escheats to any Person, until the Sheriff, or other proper Officer, have made Enquiry, by a Jury upon their Oaths, into the true Value thereof, nor until you have transmitted to Our Commissioners of Our Treasury, and to Our Commissioners for Trade and Plantations, a particular Account of such Forfeitures and Escheats, and the Value thereof. And you are to take Care, that the Produce of such Forfeitures and Escheats, in case We shall think proper to give You Directions to dispose of the same, be duly paid to Our Treasurer or Receiver General of Our said Province, and a full Account transmitted to Our Commissioners of Our Treasury, or Our High Treasurer for the Time being, and to Our Commissioners for Trade and Plantations, with the Names of the Persons to whom disposed.

66. And whereas Commissions have been granted unto several Persons in Our respective Plantations in America for the trying of Pirates in those Parts, pursuant to the Acts for the more effectual Suppression of Piracy; and by a Commission already sent to Our Province of New York, Our Governor there is impowered, together with Others therein mentioned, to proceed accordingly in Reference to Our said Province; Our Will and Pleasure is, that you do use your best Endeavours to apprehend all Persons whatever who may have been guilty of Piracy within your Government, or who having committed such Crimes at other Places, may come within your Jurisdiction; and until We shall think proper to direct the like Commission to be established for Our Government of Quebec, You are to send such Pirates, with what Proofs of their Guilt You can procure or collect, to Our Governor of New York to be tried and punished under the Authority of the Commission established for those Parts.

67. And whereas you will receive from Our Commissioners for executing the Office of High Admiral of Great Britain and of Our Plantations, a Commission constituting you Vice Admiral of Our said Province; You are hereby required and directed carefully to put into Execution the several Powers thereby granted to you.

68. Whereas great Inconveniences have happened heretofore by Merchant Ships and other Vessels in the Plantations wearing the Colours borne by Our Ships of War, under Pretence of Commissions granted to them by the Governors of the said Plantations, and, by trading under those Colours, not only amongst Our own Subjects, but also those of other Princes and States, and committing divers Irregularitys, they may very much dishonor Our Service; For preventing thereof You are to oblige the Commanders of all such Ships, to which you shall grant Commissions, to wear no other Colours than such as are described in an Order of Council of the seventh of January 1730, in relation to Colours to be worn by all Ships and Vessels, except Our Ships of War.

69. And whereas there have been great Irregularitys in the manner of granting Commissions in the Plantations to private Ships of War, You are to govern yourself, whenever there shall be Occasion, according to the Commissions and Instructions granted in this Kingdom: But you are not to grant Commissions of Marque or Reprizal against any Prince or State, or their Subjects, in Amity with Us, to any Person whatsoever, without Our special Command.

70. Whereas We have been informed that, during the time of War, Our Enemies have frequently got Intelligence of the State of Our Plantations by Letters from private Persons to their Correspondents in Great Britain, taken on board Ships coming from the Plantations, which has been of dangerous Consequence; Our Will and Pleasure therefore is, that you signify to all Merchants, Planters and Others, that they be very cautious, in time of War, whenever that shall happen, in giving any Accounts by Letters of the public State and Condition of Our Province under your Government; And you are further to give Directions to all Masters of Ships, or other Persons to whom you may entrust your Letters, that they put such Letters into a Bag, with a

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sufficient weight to suit the same immediately in Case of imminent danger from the Enemy; And you are also to let the Merchants and Planters know, how greatly it is for their Interest that their Letters should not fall into the Hands of the Enemy, and therefore that they should give like Orders to Masters of Ships in relation to their Letters; And you are further to advise all Masters of Ships, that they do sink all Letters, in case of Danger, in the Manner before mentioned.

71. And whereas, in Time of War, the Merchants and Planters in Our Plantations in America did correspond and trade with Our Enemies, and carry Intelligence to them, to the great Prejudice and Hazard of Our said Plantations; You are therefore by all possible Methods to endeavour to hinder such Trade and Correspondence in Time of War.

72. And You are to report to Us, by Our Commissioners for Trade and Plantations,—

What is the Nature of the Soil and Climate of the Province under your Government. If it differs in these Circumstances from Our other Northern Colonies, in what that Difference consists? And what beneficial Articles of Commerce the different Parts of it are capable of producing?

What Rivers there are, and of what Extent and Convenience to the Planters?

What are the principal Harbours; how situated, of what Extent; and what is the Depth of Water, and Nature of the Anchorage in each of them?

What Quantity of Land is now under actual Improvement and Settlement? What are the chief Articles of Produce and Culture; the annual Amount of the Quantity of each; and upon what Terms and Conditions the Inhabitants hold their Lands, either of Cultivation, Rent, or Personal Service?

What is the Quantity, Nature and Property of the Land uncultivated; how much of it is capable of Culture; and what part thereof is private Property?

What is the Number of Inhabitants, Whites and Blacks, distinguishing each? What Number of the Former is capable of bearing Arms, and what Number of the Latter is annually necessary to be supply'd in proportion to the Land cultivated?

What was the Nature, Form and Constitution of the Civil Government; what Judicatures were there established, and under what Regulations did the French Inhabitants carry on their Commerce?

73. You are from time to time to send unto Us, by Our Commissioners for Trade and Plantations, as aforesaid, an Account of the Increase and Decrease of the Inhabitants, Whites and Blacks, and also an Account of all Persons born, christened and buried.

74. Whereas it is absolutely necessary, that We be exactly informed of the State of Defence of all Our Plantations in America, as well in relation to the Stores of War that are in each Plantation, as to the Forts and Fortifications there; and what more may be necessary to be built for the Defence and Security of the same; You are as soon as possible to prepare an Account thereof with relation to Our said Province in the most particular manner; And You are therein to express the present State of the Arms, Ammunition and other Stores of War, belonging to the said Province, either in public Magazines, or in the Hands of private Persons; together with the State of all Places, either already fortified, or that you judge necessary to be fortified for the Security of Our said Province; And you are to transmit the said Accounts to Our Commissioners for Trade and Plantations, as also a Duplicate thereof to Our Master General or principal Officers of Our Ordnance; Which Accounts are to express the Particulars of Ordnance, Carriages, Balls, Powder, and other Sorts of Arms and Ammunition in Our public Stores, and so from time to time of what shall be sent you, or bought with the public Money, and to specify the Time of the Disposal, and the Occasion thereof: And You are half yearly to transmit a general Account of the State of the Fortifications and Warlike Stores, specify'd in the manner above mentioned.

75. You are from time to time to give an Account, what Strength your Neighbours have by Sea and Land, and of the Condition of their Plantations, and what Correspondence You keep with them.

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76. And in case of any Distress of any other of Our Plantations, You shall, upon Application of the respective Governors thereof unto you, assist them with what Aid the Condition and Safety of Our Province under Your Government can spare.

77. If anything shall happen, which may be of Advantage or Security to Our Province under your Government, which is not herein, or by your Commission provided for, We do hereby allow unto you, with the Advice and Consent of Our Council, to take Order for the present therein, giving unto Our Commissioners for Trade and Plantations speedy Notice thereof, in order to be laid before Us, that you may receive Our Ratification, if We shall approve the same:—provided always, that you do not, by Colour of any Power or Authority hereby given you, commence or declare War without Our Knowledge and particular Commands therein.

78. And whereas We have, by the second Article of these Our Instructions to you, directed and appointed that your chief Residence shall be at Quebec; you are nevertheless frequently to visit the other parts of your Government, in order to inspect the Management of all public Affairs, and thereby the better to take Care, that the Government be so administered, that no disorderly Practices may grow up contrary to Our Service and the Welfare of Our Subjects.

79. And whereas great Prejudice may happen to Our Service, and the Security of the Province, by your Absence from those Parts, You are not, upon any Pretence whatsoever, to come into Europe, without having first obtained Leave for so doing from Us under Our Sign Manual and Signet, or by Our Order in Our Privy Council; Yet nevertheless in case of Sickness, You may go to South Carolina, or any other of Our Southern Plantations, and there stay for such Space as the Recovery of your Health may absolutely require.

80. And whereas We have thought fit by Our Commission to direct, that in case of your Death or Absence, and the Death or Absence of Our Lieutenant Governors of Montreal and Trois Rivieres, and in Case there be at that time no Person within Our said Province, commissionated or appointed by Us to be Commander in Chief, that the Eldest Councillor, who shall be at the time of your Death or Absence, or at the Death or Absence of Our Lieutenant Governors, as aforesaid, residing within Our said Province under your Government, shall take upon him the Administration of Government, and execute Our said Commission and Instructions, and the several Powers and Authorities therein directed; It is nevertheless Our express Will and Pleasure, that in such Case the said President shall forbear to pass any Act or Acts, but what are immediately necessary for the Peace and Welfare of the said Province, without Our particular Order for that purpose; And that he shall not remove or suspend any of the Members of Our Council, nor any Judges, Justices of the Peace, or other Officers Civil or Military, without the Advice and Consent of at least Seven of the Members of Our said Council, nor even then without good and sufficient Reasons for the same, which the said President is to transmit, signed by himself and the rest of Our said Council, to Our Commissioners for Trade and Plantations, by the first Opportunity in order to be laid before Us.

81. And whereas We are willing in the best manner to provide for the Support of the Government of Our Province aforesaid, of which You are Governor, by setting apart sufficient Allowances to such as shall be Our Governor or Commander in Chief, residing for the time being within the same; Our Will and Pleasure is, that when it shall happen that you are absent from Our said Province, One full Moiety of the Salary, and all Perquisites and Emoluments whatsoever, which would otherwise become due unto You, shall, during the time of your Absence, be paid and satisfied unto Our Commander in Chief, who shall be resident within Our said Province for the Time being; which We do hereby order and allot unto him for his Maintenance, and for the better Support of the Dignity of that Our Government.

82. And You are upon all Occasions to send unto Our Commissioners for Trade and Plantations only, a particular Account of all your Proceedings, and of the Condition of Affairs within your Government, in order to be laid before Us: provided nevertheless, whenever any Occurrences shall happen within your Government of such a Nature and Importance as may require Our more immediate Directions by One of

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Our Principal Secretaries of State, and also upon all Occasions and in all Affairs wherein you may receive Our Orders by One of Our Principal Secretaries of State, you shall in all such Cases transmit to Our Secretary of State only an Account of all such Occurrences, and of your Proceedings relative to such Orders :—

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ORDINANCE ESTABLISHING CIVIL COURTS.[1]

An ORDINANCE, for regulating and establishing the Courts of Judicature, Justices of the Peace, Quarter-Sessions, Bailiffs, and other Matters relative to the Distribution of Justice in this Province.[2]

Whereas it is highly expedient and necessary, for the well governing of His Majesty's good Subjects of the Province of *Quebec*, and for the speedy and impartial Distribution of Justice among the same, that proper Courts of Judicature, with proper Powers and Authorities, and under proper Regulations, should be established and appointed :

His Excellency the Governor, by and with the Advice, Consent and Assistance of of His Majesty's Council, and by Virtue of the Power and Authority to him given by His Majesty's Letters Patent, under the Great Seal of *Great-Britain*, hath thought fit to Ordain and Declare ; and his said Excellency, by and with the Advice, Consent and Assistance aforesaid, *Doth hereby Ordain and Declare*,

That a Superior Court of Judicature, or Court of King's Bench, be established in this Province, to sit and hold Terms in the Town of *Quebec*, twice in every Year, *viz.* One to begin on the Twenty-first Day of *January*, called *Hillary* Term, the other on the Twenty-first Day of *June*, called *Trinity* Term.

In this Court His Majesty's Chief-Justice[3] presides, with Power and Authority to hear and determine all criminal and civil Causes, agreeable to the Laws of *England*, and to the Ordinances of this Province ; and from this Court an Appeal lies to the Governor and Council, where the Matter in Contest is above the Value of *Three Hundred Pounds* Sterling ; and from the Governor and Council an Appeal lies to the King and Council, where the Matter in Contest is of the Value of *Five Hundred Pounds* Sterling or upwards,

In all Tryals in this Court, all His Majesty's Subjects in this Colony to be admitted on Juries without Distinction.[4]

And His Majesty's Chief-Justice, once in every Year, to hold a Court of Assize, and General Goal-Delivery, soon after *Hillary* Term, at the Towns of *Montreal*[5] and *Trois-Rivières*, for the more easy and convenient Distribution of Justice to His Majesty's Subjects in those distant Parts of the Province.

[1] The text of this ordinance is taken from, "Ordinances, Made for the Province of Quebec, by the Governor and Council of the said Province, since the Establishment of the Civil Government. Quebec, 1767." This has been compared with the copy in the Canadian Archives, vol. Q 62 A, pt. 2. p. 500.

[2] This and the other ordinances of the period were passed under the authority of the Proclamation of Oct. 8th, 1763, together with the Commission and Instructions given to Governor Murray. Civil Government was not formally established in Canada until Aug. 10th, 1764. This was due to the terms of the Treaty of Paris, of 10th Feb., 1763, which specified that eighteen months were to be allowed for those French-Canadians who cared to leave the country to do so.

[3] The first Chief Justice of Canada was William Gregory, appointed in 1764.

[4] Accompanying the copy of this ordinance sent to the Home Government, were certain explanatory observations, in which Governor Murray states his reasons for introducing various features. On this clause his observation is as follows:—"As there are but Two Hundred Protestant Subjects in the Province, the greatest part of which are disbanded Soldiers of little Property and mean Capacity, it is thought unjust to exclude the new Roman Catholic Subjects to sit upon Juries, as such exclusion would constitute the said Two hundred Protestants perpetual Judges of the Lives and Property of not only Eighty Thousand of the new Subjects, but likewise of all the Military in the Province ; besides if the Canadians are not to be admitted on Juries, many will Emigrate ; This Establishment is therefore no more than a temporary Expedient to keep Things as they are until His Majesty's Pleasure is known on this critical and difficult Point." Q 62 A, pt. 2, p. 500.

[5] Governor Murray's observation :—"We find, which was not at first apprehended, that the Court of Assize proposed to be held at Montreal Twice every year, will be attended with too much Expense to the Crown, and therefore that Establishment shall be corrected." Ibid. p. 502.

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And whereas an inferior Court of Judicature, or Court of Common-Pleas,[1] is also thought necessary and convenient, *It is further Ordained and Declared, by the Authority aforesaid*, That an inferior Court of Judicature, or Court of Common-Pleas, is hereby established, with Power and Authority, to determine all Property above the Value of *Ten Pounds*, with a Liberty of Appeal to either Party, to the Superior Court, or Court of King's-Bench, where the Matter in Contest is of the Value of *Twenty Pounds* and upwards.

All Tryals in this Court to be by Juries,[2] if demanded by either Party; and this Court to sit and hold two Terms in every Year at the Town of *Quebec*, at the same Time with the Superior Court, or Court of King's-Bench. Where the Matter in Contest in this Court is above the Value of *Three Hundred Pounds* Sterling, either Party may (if they shall think proper) appeal to the Governor and Council immediately, and from the Governor and Council an Appeal lies to the King and Council, where the Matter in Contest is of the Value of *Five Hundred Pounds* Sterling or upwards.

The Judges in this Court are to determine agreeable to Equity, having Regard nevertheless to the Laws of *England*, as far as the Circumstances and present Situation of Things will admit, until such Time as proper Ordinances for the Information of the People can be established by the Governor and Council, agreeable to the Laws of *England*.

The *French* Laws and Customs to be allowed and admitted in all Causes in this Court, between the Natives of this Province, where the Cause of Action arose before the first Day of *October*, One Thousand Seven Hundred and Sixty-four.

The first Process of this Court to be an Attachment against the Body.

An Execution to go against the Body, Lands or Goods of the Defendant.

[3]*Canadian* Advocats, Proctors, &c. may practise in this Court.

And whereas it is thought highly necessary for the Ease, Convenience and Happiness of all His Majesty's loving Subjects, That Justices of the Peace should be appointed for the respective Districts of this Province, with Power of determining Property of small Value in a summary Way, *It is therefore further Ordained and Declared, by the Authority aforesaid*, and full Power is hereby Given and Granted to any one of His Majesty's Justices of the Peace, within their respective Districts, to hear and finally determine in all Causes or Matters of Property, not exceeding the Sum of *Five Pounds* current Money of *Quebec*, and to any two Justices of the Peace, within their respective Districts, to hear and finally determine in all Causes or Matters of Property, not exceeding the Sum of *Ten Pounds* said Currency, which Decisions being within, and not exceeding the aforesaid Limitation, shall not be liable to an Appeal; and also full Power is, by the Authority aforesaid, Given and Granted, to any three of said Justices of the Peace to be a Quorum, with Power of holding Quarter-Sessions in their respective Districts every three Months, and also to hear and determine all Causes and Matters of Property which shall be above the Sum of *Ten Pounds*, and not exceeding *Thirty Pounds* current Money of *Quebec*, with Liberty of Appeal to either Party to the Superior Court, or Court of King's-Bench: *And it is hereby Ordered*, That the aforesaid Justices of the Peace do issue their Warrants, directed to the Captains and other Officers of the Militia in this Province, to be by them executed, until the Provost-Marshal, legally authorised

[1] Governor Murray's observation :—"The Court of Common Pleas is only for the Canadians; not to admit of such a Court until they can be supposed to know something of our Laws and Methods of procuring Justice in our Courts, would be like sending a ship to sea without a Compass; indeed it would be more cruel—the ship might escape. Chance might drive her into some hospitable Harbour, but the poor Canadians could never shun the Attempts of designing Men, and the Voracity of hungry Practitioners in the Law; they must be undone during the First Months of their Ignorance; if any escaped, their Affections must be alienated and disgusted with our Government and Laws" Ibid. p. 502.

[2] Governor Murray's observation :—"It is necessary to Observe that the few British Traders living here, of which not above Ten or Twelve have any fixed Property in this Province, are much dissatisfied because we have admitted the Canadians on Juries; the Reason is evident, their own Consequence is thereby bounded. But the Practitioners in the English Law have probably put them out of Humour with the Court of Common Pleas (which they are pleased to call unconstitutional :) Ibid. p. 503.

[3] Governor Murray's observation :—"We thought it reasonable and necessary to allow Canadian Advocates and Proctors to practice in this Court of Common Pleas only (for they are not admitted in the other Courts) because we have not yet got one English Barrister or Attorney who understands the French Language." Ibid. p. 504. See also, in connection with this and the previous note, Murray's letter to the Lords of Trade, Oct. 29th, 1764, p. 167 and the petition of the Quebec Traders to the King, p. 168

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by His Majesty, shall arrive, and other inferior Officers be appointed for that Purpose; all Officers, Civil and Military, or other His Majesty's loving Subjects, are hereby commanded and required to be aiding and assisting to the said Justices and Officers of Militia in the due Execution of their Duty. *And it is further Ordered and Directed, by the Authority aforesaid,* That two of the said Justices of the Peace do sit weekly in Rotation, for the better Regulation of the Police, and other Matters and Things in the Towns of *Quebec* and *Montreal*, and that the Names of the Justices who are to sit in each Week, be posted up on the Door of the Session-House by the Clerk of the Peace, two Days before their respective Days of Sitting, that all Persons may know to whom to apply for Redress.

And whereas there are not at present a sufficient Number of Protestant Subjects, resident in the intended District of *Trois-Rivieres*, qualified to be Justices of the Peace, and to hold Quarter-Sessions, *It is therefore further Ordained and Declared, by the Authority aforesaid,* That from henceforth this Province shall be divided into two Districts, to be known and called by the Names of *Quebec* and *Montreal*, for the Time being, and until there may be a competent Number of Persons settled at or near *Trois-Rivieres*, duly qualified to execute the Office of Justices of the Peace, and the Power of holding such Quarter-Sessions above-mentioned, or until His Majesty's Pleasure be known in that Behalf; and that the said two Districts be divided and bounded by the River *Godfroy* on the South, and by the River *St. Maurice* on the North Side.

And whereas it is thought very expedient and necessary, for the speedy and due Execution of the Laws, and for the Ease and Safety of His Majesty's Subjects, That a sufficient Number of inferior Officers should be appointed in every Parish throughout this Province; *It is therefore Ordered, by the Authority aforesaid,* That the Majority of the Householders, in each and every Parish, do, on the Twenty-fourth Day of *June*, in every Year, elect and return to the Deputy-Secretary, within fourteen Days after such Election, six good and sufficient Men to serve as Bailiffs[1] and Sub-Bailiffs in each Parish, out of which Number the King's Governor, or Commander in Chief for the Time being, with the Consent of the Council, is to nominate and appoint the Persons who are to act as Bailiffs and Sub-Bailiffs in each Parish; and such Nomination or Appointment is to be notified by the Deputy-Secretary to the respective Parishes, and also published in the QUEBEC-GAZETTE, some Time in the last Week in *August* in every Year; and the said Bailiffs and Sub-Bailiffs, so nominated as aforesaid, are to enter upon, and begin to execute their respective Offices on the Twenty-ninth Day of *September* in every Year.

No Person to be elected a second Time to the same Office, except the whole Parish has served round, or that those who have not, are laid aside for some material Objection, which must be supported by Proof: But that there may never be an entire Set of new Officers at one Time, but that those who remain may be able to instruct those who enter into Office, one of those Persons who served as Sub-Bailiffs in each Parish, to be elected and nominated Bailiffs of said Parish the ensuing Year.

If a Bailiff dies in his Office, the Governor, or Commander in Chief, will nominate one of those returned by said Parish to serve as Sub-Bailiffs for the Remainder of the Year; and when a Sub-Bailiff happens to die in Office, the Bailiffs shall assemble the Parish upon the next publick Feast Day insuing his Decease, who shall proceed to elect and return, as aforesaid, another Sub-Bailiff.

The Election of Bailiffs and Sub-Bailiffs for this present Year, to be on the Twentieth Day of *October*; their Names to be returned immediately after the Election: Their Nomination will be notified and published by the Deputy-Secretary as soon as may be, and they shall enter upon, and begin to execute their respective Offices, on the First Day of *December*, but all Elections, &c. after this Turn, shall be upon the Days and Times above-mentioned and appointed for that Purpose.

The Bailiffs are to oversee the King's High-ways and the publick Bridges, and see that the same are kept in good and sufficient Repair; to arrest and apprehend all Criminals, against whom they shall have Writs or Warrants, and to guard and conduct

[1] Governor Murray's observation:—"We called them Bailiffs, because the Word is better understood by the New Subjects than that of Constable." Ibid. p. 510.

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them through their respective Parishes, and convey them to such Prisons or Places as the Writ or Warrant shall direct: They are also to examine all Bodies that are exposed, and on whom any Marks of Violence appear, in Presence of five reputable Householders of the same Parish, whom he is hereby impowered to summons to inspect the same, and report in Writing the State and Circumstances thereof to the next Magistrate, that a further Examination may be made therein if necessary; but this to be done only where the Coroner cannot by any Possibility attend, which in this extensive Province may frequently happen.

Where any Disputes happen concerning the Breaking or Repairing of Fences, upon Complaint made to the Bailiff, he shall summons the Defendant, who is to choose three indifferent Persons, and the Plaintiff three more, and these six, the Bailiff presiding, to decide the Dispute; from their Sentence either Party may appeal to the Quarter-Sessions; the Person found in Fault to pay One Shilling and no more, to the Person who shall draw up the Decision.

These Bailiffs to be sworn into their Office by the next Justice of the Peace, as soon as may be after their Nomination as aforesaid, and the said Oath to be returned to the next Quarter-Sessions by such Justice.

GIVEN by His Excellency the Honorable JAMES MURRAY, *Esq; Captain-General and Governor in Chief of the Province of* QUEBEC, *and Territories thereon depending in* America, *Vice Admiral of the same, Governor of the Town of* Quebec, *Colonel-Commandant of the Second Battalion of the Royal American Regiment*, &c. &c. *In Council, at* Quebec, *the 17th of* September, Anno, Domini, 1764, *and in the Fourth Year of the Reign of our Sovereign Lord* GEORGE *the* III, *by the Grace of* GOD *of* Great-Britain, France, *and* Ireland, *KING, Defender of the Faith*, &c. &c.

JA: MURRAY.

By Order of His EXCELLENCY in Council,
J. GRAY, *D. Sec^ry*

Governor Murray to the Earl of Halifax.[1]

QUEBEC 15^th Oct^r 1764

MY LORD When the Commission His Majesty had been gratiously pleased to honor me with as Governor of this Province arrived at Quebec, The Gentlemen who had till then acted as Lieu^t Governors of Montreal and Trois Rivieres chose Still to Continue so in their Military Capacitys, and declared I could have no Command over the Troops in their respective Districts.[2]

The Regard I have for my Royal Masters Service which must ever make me Studious to Obviate, any real or possible Motive of Dissagreement, amongst his officers, induced me to Wave a Right which appeared to myself plain, incontestable, and indeed necessary for the Governor of this Province; I however laid the same before the Commander in Chief, and at the same time sent him a Coppy of my Military Commission, as Governor of the Town and Dependencies of Quebec, Coppys of the Letters which have pass'd on this Occasion, I have the honor to lay before your Lordship; And as I plainly forsee M^r Gage[3] means, to divest me of all Military Authority, I should be Deficient in my Duty was I not to represent to your Lordship the Inconveniencys to His Majestys Service, which in my Opinion, must necessarly happen from such a Step.

It must be allowed that without a Military fforce this lately Conquerd Province cannot be Govern'd, there doeth not exist in it above One hundred protestant Subjects

[1] From Public Record Office, as copied in Canadian Archives, vol. Q 2, p. 206.

[2] The friction which developed between Murray at Quebec and Gage and Burton at Montreal and Three Rivers, and afterwards Burton and Haldimand at these places, is evidenced in numerous letters between these officers and with the Home Government, as given in various volumes of the Haldimand Papers, e. g. B 1, B 2, B 6, B 9, and in Q 2, in Canadian Archives.

[3] In Aug. 1763, upon Sir Jef. Amherst being granted leave to return to Britain, Maj. Gen. Gage was appointed, for the time, Commander in Chief of the Forces in America. In Sept., 1764, Sir Jef. Amherst having decided not to return to America, Gen. Gage received his regular Commission as Commander in Chief. See *Calendar of Home Office Papers, 1760–1765*, Nos. 967 & 1449.

exclusive of the Troops, And by my instructions of these hundred Protestants must be composed the Magistracy, But what Force, what weight, can such a Magistracy have, unless the Supreme Magistrate has the Disposition of the Military Force; if he has not, it is to be apprehended that the People will be oppressd by the Soldiery, that the Civil Governor, and his Officers, will become Contemptable, and in place of being the means of preserveing order, and promoteing the happiness of the Subject, they may from the Natural Jealousy that such an Establishment will produce become the bane of Peace, As the weak efforts they will of course make in Support of their Authority, can be productive of Nothing but Vexation, and Confusion.

The Canadians are to a man Soldiers, and will naturally conceive that he who Commands the Troops, should govern them; I am convinced at least it will be easyer for a Soldier to introduce and make palateable to them Our Laws, and Customs, than it can be for a Man degraded from *the Profession of Arms;* It may be impertinent to say more on a Subject I think so obvious, I have only therefore to entreat your Lordship may be assured that this Remonstrance proceeds from Nothing, but the desire, and Anxiety I have to execute the trust reposed in me, with Propriety, and to the Satisfaction of His Majesty, and his Servants.

I by no means think it right, That the Governor of Quebec should be upon the American Staff. His Appointments are no doubt Sufficient to Support the Dignity of his Office, and the Occupations of it, will necessaryly require his immediate Attendance in the Province, Whereas that of the General Officers of this Establishment will beyond a doubt be necessary in the upper Countrys, where the Posts to watch the Indians, and to regulate the Trade with them will be established; All I plead for is the necessity of having the Disposition of the Troops destined for the Security of the Province intrusted to my care, that they may pay me the usual Complements, and receive from me the Parole; I doe not even desire to interfere with the Œconomy of those Troops, that may be left to the Senior Officer in the Province or the nearest Brigadier upon the Staff. If however for reasons I do not forsee, His Majesty shal think it expedient that no Civil Governor in America shal have any Military Command, I have only to Lament my Singular ill fortune, in being the first Man upon the Spot with his Regiment, and that in his own Garrison too, who was Commanded by a Junior Officer, in a Country where he had the honor to exert his Military facultys to the Satisfaction of His Royal Sovereigns.[1]

I have the honor to be with the utmost Truth and Regard My Lord,
Your Lordship's most Oblidged, most Obedient, and most
faithfull humble Servant

JA: MURRAY

To the Right Hon[ble]
The Earl of Hallifax

PRESENTMENTS OF THE GRAND JURY OF QUEBEC.[2]

Presentments of Oct[r] Sessions made at a Continuance thereof by Adjournment held at the Sessions house in the City of Quebec the 16[th] Oct[r] 1764 by the Grand Jury in, and for the said District represent.

1. That the Great Number of inferior Courts establish'd in this province with an intention to administer Justice are tiresome litigious and expensive to this poor Colony as they very often must be attended with the disagreeable necessity of appeals and of course of many exorbitant fees.

[1] In another letter to Halifax, Oct. 30, 1764, complaining of the interference of Gage and Burton, Murray attributes their attitude to jealousy of his promotion to be Governor of Quebec, and suggests that Burton should be removed from his command at Montreal. Replying to his representations, Halifax informs Murray, in his despatch of Jan. 12, 1765, that no change is to be made in the system of military commands in North America, but that Burton had been instructed not to interfere in civil affairs. See Canadian Archives vol. Q 2, pp. 337 & 342.

[2] Canadian Archives; Dartmouth Papers, vol. 1, p. 29. It will be observed that the criticism is largely directed against certain features of the Ordinance of Sept. 17, 1764.

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2ᵈ The Great number appointed Justices of the Peace out of so few men of Character legally qualified, and fit to be trusted with determining the liberty and property of his Majesty's Subjects to serve their Country as Jurors, is Burthensome and not practised in other Infant Colonys like this. It can answer no good end, to waste mens time, in attending on Courts where no man is upon the Bench qualified to explain the Law, and sum up the Evidences to the Jury, to prevent its being misled by the Barristers.

4. That in the Southern Colonies, where men qualified to serve the publick are scarce, there are no Jurys calld but when the Chief Justice of the province presides, therefore neither the Lives nor Libertys of his Majesty's Subjects, nor any property above the value of 3£ Sterlᵍ are left finally to the decision of the Justices of the Peace, and for the easy and speedy dispatch of Justice there are Annually held three Courts of Common pleas and Two of Sessions or assizes, where Jurys are summon'd in Rotation from the different parts of the province and return'd by Ballots, Yet we are of opinion from the present state of this Colony it would be reasonable to Authorize any three of his Majesty's Justices of the Peace finally to determine the fate of any sum not exceeding Ten pounds without Jury or appeal.

5. We represent also as a very great grievance that the market places are converted into Hutts, Stalls &c. for Nurserys of Idlers, who would out of Necessity be employ'd in several Branches of Industry, such as Fishing Farming &cᵃ if not permitted contrary to good policy to occupy and infest the publick Ground.

6. Giving away and turning the Kings Batterys Docks and Wharfs into private property, or suffering them to be so occupy'd, are great Grievances to the Inhabitants of this province.

7. We recommend the exertion of the Laws of the Mother Country for the due observance of the Sabbath that the same may not longer be profaned, by selling, buying keeping open shops, Balls, Routs, Gaming or any other Idle Divertions, for the better accomplishing of which, a Learned Clergyman of a moral and exemplary Life, qualified to preach the Gospel in its primative purity in both Languages would be absolutely necessary.

8. From the sense of the nature of Oaths administred to Jurys as also of the consequences of the matters that may occur for discussion, We in Justice to Ourselves and our fellow subjects, are resolved never more to sit as Jurors at any Court where some man sufficiently versed in the Law does not preside.

9. We represent that as the Grand Jury must be consider'd at present as the only Body representative of the Colony, they, as British Subjects, have a right to be consulted, before any Ordinance that may affect the Body that they represent, be pass'd into a Law, And as it must happen that Taxes be levy'd for the necessary Expences or Improvement of the Colony in Order to prevent all abuses & embezlements or wrong application of the publick money.

10. We propose that the publick Accounts, be laid before the Grand Jury, at least twice a year to be examined and Check'd by them and that they may be regularly settled every Six months before them, which practice strictly adhered to, will very much prevent the abuses and confusion, too common in these matters.

11. An Ordinance[1] pass'd by the Govʳ in Council confirming and rendring valid all Decrees of the different military Councils erected in this province before the establishmᵗ of the Civil Law[1] may be amended by allowing an Appeal to any of the Civil Courts, if the matter decided in any of the Military Courts exceed the sum of Ten pounds.

12. The Ordinance made by the Governor and Council for establishing Courts of Judicature in this province[2] is grievous and some Clauses of it, We apprehend to be unconstitutional, therefore it ought forthwith to be amended to prevent his Majesty's Subjects being aggrieved any longer thereby.

13. proper regulations regarding the measurement & quality of Fire wood are wanted as well as the following articles. Vizᵗ

[1] For this ordinance see "Ordinances, Made for the Province of Quebec, by the Governor and Council &c. . Que., 1767." p. 16.

[2] This is the Ordinance of Sept. 17, 1764, given at p. 149.

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For regulating Carts and Carriages of every kind.
For clearing and keeping clean the public streets Docks and Landing places.
For sweeping Chimnies to prevent accidents by Fire.
For establishing a publick protestant school and a Poor house.

14 For suppressing gaming houses, in particular that of the Quebec Arms kept by John King in the lower Town, which we have been informed has been very particularly countenanced; and which we ourselves present, from our own Knowledge as a notorious nusance, and prejudicial to the Industry and Trade of this City.

15 Also for the preventing for the future any abuses Arising from (and for the amending of) that well intended order for carrying Lanthorns in the night time, that regular people going about their Lawful Business without giving Disturbance to the publick quiet, may not be liable to Imprisonments, by Sentrys serjeants or Officers.

	JAMES JOHNSTON, Foreman
JOHN LYMBURNER	SAM^l SILLS
—— DUMOND	—— PERRAULT
JOHN DANSER	—— PONEY
—— CHAREST	ALEX^r MCKINZIE
—— TACHET	PHIL. PAYN
SAM^l DUNCAN	THOS. STORY
PETER FANEIUL	GILBERT MCRANDDLE
GEO. FRALTON	A DUMAS.
DAN^l BAYNE	BOISSEAU
THO^s AYLWYN	AMIOTT

That. Among the many grievances which require redress this seems not to be the least, that persons professing the Religion of the Church of Rome do acknowledge the supremacy and jurisdiction of the Pope, and admit Bulls, Briefs, absolutions &c^a from that see, as Acts binding on their Consciences, have been unpannelld, en Grand and petty Jurys even where Two protestants were partys, and whereas the Grand Inquest of a County City of Borough of the Realm of Great Britain, are obliged by their Oath to present to a Court of Quarter Sessions or assises, what even appears an open violation of the Laws and Statutes of the Realm, any nusance to the subjects or Danger to his Majesty's Crown and dignity and Security of his Dominions. We therefore believe nothing can be more dangerous to the latter then admitting such persons to be sworn on Jurys, who by the Laws are disabled from holding any Office Trust or Power, more especially in a Judicial Capacity, with respect to which above all other, the Security of his majesty, as to the possession of his Dominions and of the subject as to his Liberty, property and Conscience is most eminently Concern'd.

That. By the Definitive Treaty the Roman Religion was only tolerated in the province of Quebec so far as the Laws of Great Britain admit, it was and is enacted by the 3^d Jam^s 1^st Chap^r 5^th Section 8^th no papist or popish Recusant Convict, shall practice "the Common Law, as a Councellor, Clerk, Attorney, or Sollicitor nor shall "practice the Civil Law, as Advocate or proctor, nor practice physick, nor be an apothe- "cary, nor shall be a Judge, Minister, Clerk or Steward of or in any Court, nor shall "be Register or Town Clerk or other Minister or Officer in any Court, nor shall bear "any office or charge, as Captain, Lieutenant, Serjeant, Corporal, or Antient Bearer or "Company of Soldiers nor shall be Captain, Master, or Governor, or bear any office of "Charge, of or in any Ship, Castle or Fortress. but be utterly disabled for the same, and "every person herein shall forfeit one hundred pounds; half to the King and half to him that shall sue. We therefore believe that the admitting persons of the Roman Religion, who own the authority, supremacy and Jurisdiction or the Church of Rome, as Jurors, is an open Violation of our most sacred Laws and Libertys, and tending to the utter subversion of the protestant Religion and his Majesty's power authority, right, and possession. of the province to which we belong.

That—so many Gentlemen of the Army and in actual service exercising any Judicial Authority, to be unconstitutional nothing but necessity by the want of a sufficient num-

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ber of subjects qualify'd for the purpose, can excuse, even in a new Country, such an unwarrantable incroachment on the establish'd maxims of a British Government.

The foregoing Representations of Grievances abuses and nusances, we the Grand Jurors of the District of Quebec, believe it our indispensable duty to make from the nature of Our Oath and charge, and from the informations presented to us, as well as what occurs to our own observations, and do strongly recommend the same for redress to all those who by their Sacred Oath, are bound to redress them.

Ja[s] Johnston Foreman
Tho[s] Story
Alex[r] McKinzie
Sam[l] Sills
Sam[l] Duncan
Dan[l] Bayne
Geo. Fulton
Tho[s] Alwin
Jn[o] Lymburner
Phil. Payne
Peter Farneuil
Jn[o] Danser
Gilbert McRandall
A. Dumas

[1] As the presentment made by the protestant members of the Jury, wherein the impannelling of Roman Catholicks upon Grand petty Juries, even where two protestants are the parties, is complained of. - As this very presentment has been openly & ungenerously used as a handle to set his Majesty's old & new Subjects at varience in this province, we cannot help endeavour[g] to set the public right in this particular in which they have been so grossly imposed on: What gave birth to this presentmt. was the following short, but pithy Paragraph, in the Ordinance of the 17[th] Day of Sept[r] last.

"In all Tryalls in this Court all his Majesty's Subjects in this Colony to be admitted on Juries without any distinction:" This is qualifying the whole province at once for an Office which the best & most sensible people in it are hardly able to discharge: It then occur'd to the Jury that was laying a Subjects life, liberty & property too open, & that both old & new Subjects might be apprehensive of the consequence from the unlimited admission of Jurymen His Majesty's lately acquired Subjects cannot take it amiss, that his ancient subjects remonstrate ag[t] this practice as being contrary to the laws of the realm of England, the benefit of which they think they have a right to, nor ought it to give offence when they demand that a protestant Jury should be impannelled when the litigating parties are protestants such were the real motives of the Presentment, and we can aver that nothing further was meant by the quotation from the Statute.

That the subscribers of the presentment meant to remove every Roman Catholick from holding any office or filling any public employment is to all intents and purposes a most vile groundless insinuation & utterly inconsistent: Sentiments & intentions such as these we abhor, & are only sorry that principles do not allow us to admit Roman Catholicks as Jurors upon a cause betwixt two protestants; perhaps theirs hold us in the same light in a Case betwixt two Catholicks, and we are very far from finding fault with them, the same liberty that we take of thinking for ourselves we must freely indulge to others.

STATEMENT BY FRENCH JURORS IN REFERENCE TO THE FOREGOING PRESENTMENTS.[2]

Charrest, Amiot, Tachet, Boisseaux, Poncy, Dumont, & Perrault nouveaux Sujets, Grand Jurés dans les districts de Quebec ayant demandés a S. E[ce] en Conseil la Traduction en François de deux Deliberations faites en Anglois en la Maison du Trois Canons tous les Jurés Assemblée dont une Signée 16[me] Oct[re] present Mois des requerants ainsi que des autres Jurés et l'autre Signée des Jurés Anciens Sujets entendant

[1] This document is not dated, but it was evidently prepared some time after the former presentments as it replies to criticisms passed upon them.

[2] Canadian Archives; Dartmouth Papers, vol. I, p. 40.

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l'Anglois seulement ; et les ayant obtenües, ils se sont cru obligés de dire le part qu'ils avoient dans les articles qui composent la premiere Deliberation.

Ils commencent par dire qu'avant la Signature de cette Deliberation il y avoit eu Plusieurs Assemblées, ou Il avoit été question de faire Plusieurs Coupons de Representations sur des feuilles volantes et dont les requerants n'ont eu connoissance que d'une Partie et dont Plusieurs entre celles dont ils ont eu connoissance avoient etés abattués et rejettées par les Requerants que de toutes les feuilles il fût fait un Precis indubitablement, et que lors qu'il fut fait, il nous fût offert pour le Signer sans qu'il nous fût interpreté, mais seulement, lû en Anglois, que sur la Representation qui fût faite par quelqu'uns de nous, afin qu'il nous fût lû, il nous fut repondu que ce precis n'etoit que le Resumé, des Coupons des Articles proposés et Acceptés dans les Seances dernieres et que le Tems pressoit pour les Porter, et que c'etoit fort inutile.

Ils vont donc d'etailler la part qu'ils ont dans ces differents Articles qui composent cette Deliberation.

1 Article. Non seulement nous n'avons eu aucune connoissance de cet Article, mais même nous nous serions opposé de toutes nos forces à cette proposition comme contraire aux Interêt des Colons nouveaux Sujets de S. M. et comme opposé au Sage Arrêt du Gouverneur et conseil qui voyant la necessité d'etablir une Jurisdiction ou les Nouveaux Sujets, pussent trouver an Azile pour y étre jugés, de francois à francois suivant les Usages, Anciens, et dans leur Langue a été encore sollicité depuis par une Requête de nommer le Juge de cette Jurisdiction, et que les Requerans avoient signés eux mêmes comme Citoyens; outre la facilité qu'ils auront a etre Jugés dans cette Jurisdiction, ils gagneront plus de la moitié des frais.

2. 3. 4. Arts Nous n'avons point compris ces Articles si ils nous ont eté interpretés, et nous ignorons ce qui ce passe dans les differentes Colonies, nous n'avons eu garde de proposer aucuns Changemens de taillés dans ces Articles.

5. Nous avons entendu que les Maisons en bois, et Etaux, dans la Marché etoient contraires a la bonne Police et quelles etoient des Occasions d'incendies.

6. Nous avons proposé à l'occasion des Quais et Chantiers qu'ils fussent destinés a l'usage et la facilité du Commerce Nous pensons que quant aux Batteries qu'elles ne sont point de notre District.

7. Nous avons entendû cette Article en partie et seulement a l'occasion de l'observation du Dimanche. Mais il ne nous a absolument point été expliqué la Proposition d'avoir un Ministre pour precher dans le deux langues l'Evangile.

8. Nous n'avons aucunes Connoissances que cet Article aye été mis en Deliberation.

9 & 10. Ces deux Articles ne nous ont point étés interpretés et nous ne sommes point assez prevoyant pour prendre des Mesures, qui nous parrissent encore fort eloignées par l'esperance ou nous sommes, qu'il ne sera question d'aucune Impôt dans cette Colonie.

11. Nous n'avons point entendu tout cette Article ainsi qu'il est expliqué, nous avons meme fait sentir, combien la Proposition de diminuer la Cour des Appels etoit prejudiciable à la Colonie, en ce que cela ouvriroit une vaste Carriere a des nouveaux procés ; que les affaires passées avoient etées jugées suivant la circonstance de Tems, et que les Preuves qui pourroient avoir servies aux jugemens pourroient ne plus exister, ce qui changeroit les Affaires de face ; cependant Nous Signames sur ce qu'il l'on nous dit, que cet Article etoit soumis a la volonté du Gouverneur et de son Conseil ; et le S. Tachet en fit la Restriction sur une feuille volante restée en depôt, et comme Minutte ; nous n'avons point entendu d'ailleurs que l'on proposa de demande une si forte diminution sur les Appels, il n'etoit question que de demander seulement un Amendement.

12. Cet Article ne nous a pas été participé et nous jugeons qu'il n'a été proposé que par ce qu'il est dit dans cette ordonnance,[1] que les Avocats Canadiens, nouveaux Sujets de S. M. pourroient exercer, cette ordonnance nous paroit d'autant plus equitable qu'il est naturel pour les nouveaux Sujets Canadiens de se servir de Personnes qu'ils entendent et de qui Ils Sont entendus, avec d'autant plus de Raisons qu'il n'y a pas un Avocat Anglois qui sçache la langue françoise, et avec lequel il ne falut un Interprette, qui ne rendroit presque jamais le vrai Sens de la Chose, d'ailleurs en quelques frais exorbitans

[1] The ordinance of Sept. 17, 1764. See p. 149.

ne se verroient pas constitué les Parties sans cette sage ordonnance qui fait la Tranquillité des familles.

13. Nous avons une parfaite Connoissance des Articles qui en compose une Partie, comme la Proposition d'établir des Reglemens pour la Mesure du Bois, pour le Charetiers et Voiturages de toutes espaces, le moyen d'entretenir les Rues nettes, les Places publiques,* et le quais, pour le Rammouage des Cheminés à fin de prevenir les Accidents du feu, c'est à ces seuls Articles auxquels vous avons déféré notre consentement, et notre situation presente ne nous a pas permis d'etendre nos soins plus loins.

14. Il n'a été question de parler des Maisons de Jeu que dans une conversation vague, et nous n'avons pas cru que l'on parla assez serieusement pour que cela meritat de deliberer, si on proposeroit de les denoncer comme Maisons suspectes, et particulierement celle du Nommé Roy, à qui aucuns de nous ne peut faire de crime de la Protection que lui accordent ceux qu'il a le Talent de bien Servir; au reste nous fûmes dans le cas de dire dans la conversation qui si l'on jouoit à des Heures indües, et a des Jeux proscrits par la Police, que cette Article pourroit etre representé comme pernicieux à la jeunesse, et au Commerce, mais nous n'avons absolument eu aucune Connoissance que cet Article fut dans la deliberation que nous avons signée.

15. Nous n'avons point entendu cet Article dans le Sens ou il est exposé, il s'en faut bien nous n'ignorions point que c'etoit à la demande et a la Sollicitation de la Ville, et pour la Sureté d'icelle que l'ordre de porter les Lanternes avoit été obtenu, et nous croyons qu'il est encore de la seureté de la Ville, et du bon ordre de sen servir. nous avons même repondu dans ce Gout en francois à une lettre du Gouverneur de cette Province, ce dernier Jour de notre Seance, sur ce qu'il proposoit d'etablir des Lanternes publiques, si le Coût n'en eut point été considerable, plusieurs de nos Confreres l'ont lu quoique en francois et nous ont dits qu'ils repondoient dans le même sens de leur Côté en Anglois.

Nous conçevons aisément qu'à fin d'éviter la Cacafone a l'avenir, que les Jurés Canadiens ne doivent donner leurs Sentiments qu'apres la Traduction en langue francoise des Objets sur lesquels on le leur demandera.

Par la connoissance que nous les G^{d} Jurés Canadiens nouveaux Sujets de S. M^{te} avons lû en langue francoise de la Representation que nos Confreres les Anciens Sujets grand Jurés, ait faits à la Cour de Seance, & deux Signée, aux fins de nous exclure de l'avantage de servir nous et les Notres, notre Patrie, et notre Roy; se faisant une Conscience de nous Croire inhabilles a Posseder aucun employ, n'y même a repousser et combattre les Ennemies de S. M^{te} nous representons la Dessus.

Que S. M^{te} etant instruite que tous les Sujets qui composent cette Province etoient Catholiques les a crûs habilles en la d.'qualité a preter le Serment de Fidelité, et capable par cette Raison de pouvoir etres admis a être utilles à leur Patrie de la façon dont on les y croiroit propres, ce seroit mal penser de croire que les Canadiens Nouveaux Sujets ne peuvent servir leur Roy, ni comme Sergent, ni comme Officiers; ce seroit un Motif bien humiliant, et bien decourageant pour des Sujets libres et assoissiés aux Avantages de la Nation, et au Prerogative, ainsy que s'en est expliqué S. M. nous avons depuis plus de six Mois des Officiers Canadiens Catholiques dans le pais d'Enhauts, et Nombre de Volontaires pour y aides a repousser les Ennemis de la Nation[1] et celui qui s'expose librement a verser son Sang au Service de son Roy et de la Nation, ne peut il pas etre admis dans les charges ou il peut egalement servir la Nation et le Publique comme Juré, des qu'il est Sujet, le 3^{e} de Jacques premier Chap. 5. Sec. 8 ne Regarde que les Catholiques qui pourroient veni dans le Royaume, et il n'y eut jamais de loix dans aucun Royaume sans exception, *avoit preuve dans le tems que l'Angleterre assorieroit aux prerogatives de la Nation une Colonie de Catholiques, si nombreuse ou si on l'avoit prevu, la loix vouloit elle en faire des esclaves, nous pensons differement que nos Confreres; et si nous etions dans l'opinion ou ils sont, nous aurions assez de Confiance dans

* Some line must have been omitted here, for as it is, it is not Sense.

1 Referring to the French-Canadian troops which Governor Murray was partially successful in raising, under the volunteer system, for the purpose of assisting in the suppression of the Indian uprising at Michillimakinak and elsewhere, under Pontiac. See Canadian Archives; Bouquet Papers; Haldimand Papers, vols. B 2, B 6, B 9; also Q 2.

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la Bonté du Roy pour croire qu'il accorderoit à tout le Nombreux peuple de cette Colonie le delai suffisant, pour en sacrifiant tous leurs biens, aller, Grater la Terre, dans desespoir, ou en les regardant comme Sujets, ils pourroient mettre leur Vie, et celle de leur Enfants à la Crie de l'injustice, ce qu'ils ne pourroient faire en restant icy, privés des Employs, ou charges en qualités de Jurés.

La Douceur d'un Gouvernement actuel nous a fait oublier nos pertes, et nous a attaché à S. M. et au Gouvernement, nos Confreres nous font envisager notre Etat comme celui d'Esclaves ; les veritables et fideles Sujets du Roy peuvent ils le devinir.

Ce qui nous fait conclure aux Protestations que nous faisons contre nos Signatures de la deliberation du Seize du Courant, en tout ce qu'elles pourroient nous prejudicier. fait a Quebec le 26ᵉ Octoʳ 1764.

BONNEAU, PERRAULT
TACHET, CHAREST, AMIOT PENEY DAMONT.

(Translation)

Charrest, Amiot, Tachet, Boisseaux, Poney, Dumont & Perrault new Subjects, Grand Jurors in the districts of Quebec, having demanded from His Excellency in Council the Translation into French of two Presentments written in English in the House of the Three Canons, all the Jurors being assembled, one of which presentments of the 16th of the present month of October, was signed by the petitioners along with the other jurors, and the other was signed by the jurors who were ancient subjects understanding English alone, and having obtained the same, they consider themselves bound to declare the part which they had taken in the articles which compose the first Presentment.

They begin by saying that before the Signature of this Presentment, there had been many sessions, where the question had been discussed by making Several Drafts of Presentment on loose sheets, and of these the petitioners had knowledge of only a part while many of those, with the contents of which they were acquainted, had been modified or rejected by the Petitioners; that a Summary certainly had been made of all the papers, and that after it was made, it was offered to us for Signature, without being interpreted, but was read in English only, that when it was requested by some of us, that it should be read to us, the answer was that this summary was only a Resumé of the Drafts of the Articles which had been proposed and accepted during the late Sessions, that time pressed for their presentation and that it was very unnecessary.

They intend therefore to set forth the part which they have had in the different Articles which compose this Presentment.

1 Article. Not only had we no knowledge of this Article, but we should certainly have opposed this proposition with all our might, as being contrary to the interests of His Majesty's New Subjects in the Colony, and as being opposed to the wise ordinance of the Governor and Council, who, seeing the necessity of establishing a Court of Justice where the New Subjects should be able to find a Sanctuary in which they might be judged as Frenchmen by Frenchmen, according to Ancient Customs, and in their own Tongue, has since been requested in a Petition to name the Judge of this Jurisdiction and which the Petitioners themselves have signed as Citizens; for besides the convenience that it would be to them to be judged in this Jurisdiction, they would save more than half the costs.

2. 3. 4. Artᶜˢ. We did not understand these Articles if they were interpreted to us, and as we are ignorant of what is going on in the different Colonies, we have no interest in proposing any particular alterations in these Articles.

5. We understand that wooden Houses and Stalls in the Market are contrary to good Policy, and are sometimes the Causes of Fires.

6. We have suggested with regard to the Quays and Dockyards that they should be allotted for the use and convenience of Trade. As to the Batteries we do not consider that they appertain to our Department.

7. We have heard this Article in part, and only in connection with Sunday observance. But the Proposal of having a Minister to preach the Gospel in both languages has certainly not been explained to us.

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8. We have no Knowledge that this matter has ever been brought up for Consideration.

9 & 10. These two Articles have not been explained to us, and we are not sufficiently far-seeing to pay attention to Measures which at present appear to us very remote, owing to the hope which we entertain that no question of Taxation for this Colony will arise.

11. We have not understood this whole Article as it is explained. We have even demonstrated how prejudicial to the Colony, was the Proposition to diminish the Court of Appeals, in that it would open a wide road to new lawsuits, that past cases had been settled according to the circumstances of the Time, and that Proofs which might have been valid for judgments then, could no longer be in existence, which would completely change the aspect of Things; however, accepting what we were told, that this Article was subject to the Will of the Governor and His Council, we subscribed to it and the S. Tachet made a note of the reservation on a loose sheet, which was left at the office, as a Minute. Moreover we had not heard that a request for such a large reduction on the Appeals was asked for, it having only been a question of asking for an Amendment.

12. This Article has never been communicated to us, and we imagine it was only proposed, because it is stated in that ordinance, that Canadian Lawyers, New Subjects of H. M. might practise. The ordinance appears to us the more equitable, in that it is only right that the new Canadian Subjects should employ Persons whom they understand, and by whom They are understood, all the more because there is not one English Lawyer who knows the French Language, and with whom it would not be necessary to employ an Interpreter who would scarcely ever give the exact meaning of the Matter in hand. And further, without this wise regulation which ensures the Tranquility of domestic affairs would not the opposing Parties find themselves involved in exorbitant expense?

13. We are thoroughly familiar with the Items which form a Part of this Article, such as the Proposal to establish Regulations for the Measuring of Wood, for Carters and Vehicles of every description, for the best method of keeping the Streets, public Squares, and Docks clean, and for the Sweeping of Chimneys to prevent Accidents by fire. We have given our consent solely to these Items, and our present situation does not allow us to extend our care in other directions.

14. There has been no question of discussing Gaming Houses except in desultory conversation, and we did not suppose it had been spoken of seriously enough to make it worth while to consider, if it was proposed to denounce them as suspicious Houses, especially that of the said King, to whom none of us can attribute as a crime the Protection which is granted him by those whom he has the Faculty of Servingso well. Besides this we did happen to say in conversation that if they were playing at unseasonable Hours, and at Games proscribed by the Police, then this Article might represent it as dangerous to youth and to Trade, but we have absolutely no knowledge that this Article was in the Presentment which we have signed.

15. We did not understand this Article in the Sense in which it is explained. Of course we were aware that it was at the request and Solicitation of the Town, and for the Safety of the same, that the order to carry Lanterns had been obtained, and we believe that it certainly would conduce to the security of the Town and to good order to carry it out. We have replied to this Effect in French to a letter from the Governor of this Province, on the last Day of our Session, at which time he proposed to establish public lamps, if the Cost was not excessive. Although written in French, many of our Fellow-members read it, and have told us that they on their side replied to the same effect in English.

We quite realize that in order to avoid Confusion in the future, Canadian Jurors should give their Opinions only after the Subjects on which it is asked have been translated into the French Language.

In view of the knowledge that we, the G[d] Jurors, Canadian new Subjects of H. M. have,—having read it in the French tongue,—of the Presentment which our confreres, the Ancient Subjects, Grand Jurors, have made at the Court of Session, and of the two Subscriptions, with the intention of excluding us from the privilege of serving ourselves

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and Our associates, our Country and our King, pretending that they conscientiously believe us to be incapable of holding any office or even of repulsing and fighting the Enemies of H. M^{ty} We make the following statement.

That H. M^{ty} being informed that all the Subjects forming this Province were Catholics still believed them capable as such of taking the Oath of Loyalty, and therefore fit to be admitted to the service of their Country, in such a way as they shall be thought qualified for. It would be shameful to believe that the Canadians, New Subjects, cannot serve their King either as Serjeant, or Officers, it would be a most humiliating thought, and very discouraging to free Subjects who have been admitted to the Privileges of the Nation, and their Rights, as explained by H. M. For more than six Months we have had Catholic Canadian Officers in the Upper Country, and a Number of Volunteers aiding to repulse the Enemies of the Nation; and cannot a man who exposes himself freely to shed his blood in the Service of his King and of the Nation be admitted to positions where he can serve the Nation and the Public as a Juror, since he is a subject? The 3rd of James I. Chap. 5. Sec. 8. only refers to Catholics who may enter the Kingdom, and as there has never been any law in any Kingdom without some exception* was a proof that in time England would admit to the National rights so numerous a Colony of Catholics, or if this had been foreseen, that the Law would seek to make them slaves. We think differently from our confreres, and even if we were of their opinion, we should have enough Confidence in the King's Goodness to believe that he would grant all the Numerous people of this Colony sufficient respite to depart, though at the sacrifice of all their possessions, and in desperation cultivate the Ground, in some place, where being considered as Subjects, they and their Children might lead their Lives sheltered from Injustice. This they could never do here were they deprived of all Offices, or positions as Jurors.

The Leniency of the existing Government has made us forget our losses, and has attached us to H. M. and to the Government; our fellow citizens make us feel our Condition to be that of Slaves. Can the faithful and loyal Subjects of the King be reduced to this?

This ends the Protest that we make against the use of our Signatures on the Presentment of the Sixteenth instant, in every point in which they might be prejudicial to us. Done at Quebec the 26th October 1764.

PERRAULT, BONNEAU,
TACHET, CHAREST,
AMIOT, PENEY,
DAMONT.

ADDRESS OF FRENCH CITIZENS TO THE KING REGARDING THE LEGAL SYSTEM.[1]

AU ROI.

La véritable gloire d'un Roy conquérant est de procurer aux vaincus le même bonheur et la même tranquilité dans leur Religion et dans la Possession de leurs biens, dont ils joüissoient avant leur deffaite: Nous avons joüi de cette Tranquilité pendant la Guerre même, elle a augmentée depuis la Paix faitte. Hé voilà comme elle nous a été procurée. Attachés à notre Religion, nous avons juré au pied du Sanctuaire une fidelité inviolable à Votre Majesté, nous ne nous en sommes jamais écartés, et nous jurons de nouveau de ne nous en jamais écarter, fussions nous par la suitte aussy malheureux que nous avons été heureux; mais comment pourrions nous ne pas l'être, après les Temoignages de bonté paternelle dont Votre Majesté nous a fait assurer, que nous ne serions jamais troublés dans l'exercise de notre Religion.

Il nous a parû de même par la façon dont la Justice nous a été rendüe jusqu'à présent, que l'intention de Sa Majesté étoit, que les Coutumes de nos Peres fussent suivies, pour ce qui étoit fait avant la Conquête du Canada, et qu'on les suivit à l'avenir, autant que cela ne seroit point contraire aux Loix d'Angleterre et au bien général.

* Some line must have been omitted here, for as it is, it is not sense.
[1] Canadian Archives; B 8, p. 121.

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Monsieur Murray, nommé Gouverneur de la Province de Quebec à la satisfaction de tous les Habitans, nous a rendu jusques à present à la Tête d'un Conseil militaire toute la Justice que nous aurions pû attendre des personnes de Loi les plus éclairés ; cela ne pouvoit être autrement ; le Désinteressement et l'Equité faisoient la Baze de leurs Jugements.

Depuis quatre ans nous jouissons de la plus grande Tranquilité ; Quel bouleversement vient donc nous l'enlever ? de la part de quatre ou Cinq Persones de Loy, dont nous respectons le Caractère, mais qui n'entendent point notre Langue, et qui voudroient qu'aussitôt qu'elles ont parlé, nous puissions comprendre des Constitutions qu'elles ne nous ont point encore expliquées et aux quelles nous serons toujours prêts de nous soumettre, lorsqu'elles nous seront connües ; mais comment les Connoître, si elles ne nous sont point rendües en notre Langue ?

De là, nous avons vu avec peine nos Compatriotes emprisonnés sans être entendus, et ce, à des fraix considèrables, ruineux tant pour le débiteur que pour le Créancier ; nous avons vu toutes les Affaires de Famille, qui se décidoient cy-devant a peu de frais, arrêtées par des Personnes qui veulent se les attribuer, et qui ne savent ny notre Langue ni nos Coutumes et à qui on ne peut parler qu'avec des Guinées à la Main.

Nous esperons prouver à Votre Majesté avec la plus parfaite Soumission ce que nous avons lhonneur de luy avancer.

Notre Gouverneur à la Tête de son Conseil a rendu un Arrêt[1] pour lEtablissement de la Justice, par lequel nous avons vu avec plaisir, que pour nous soutenir dans la Décision de nos affaires de famille et autres, il seroit etabli une Justice inférieure, où toutes les Affaires de François à François y seroient decidées ; Nous avons Vu que par un autre Arrêt,[2] pour eviter les Procès, les affaires cy-devant décidées seroient sans appel, à moins qu'elles ne soient de la Valeur de trois Cents Livres.

Avec la même Satisfaction que nous avons vu ces Sages Réglements avec la même peine avons nous vu que quinze Jurés Anglois contre Sept Jurés nouveaux Sujets, leur ont fait souscrire des Griefs en une Langue quils n'entendoient point contre ces mêmes Réglements ; ce qui se prouve par leurs Protestations et par leurs Signatures qu'ils avoient donnéesla veille sur une Requête pour demander fortement au Gouverneur et Conseil la Séance de leur Juge, attendu que leurs Affaires en souffroient.

Nous avons vu dans toute l'amertume de nos Cœurs, qu'après toutes les Preuves de la Tendresse Paternelle de Votre Majesté pour ses nouveaux Sujets ces mêmes quinze Jurés soutenus par les Gens de Loy nous proscrire comme incapables d'aucunes fonctions dans notre Patrie par la difference de Religion ; puisque jusqu'aux Chirurgiens et Apothicaires (fonctions libres en tout Pays) en sont du nombre.

Qui sont ceux qui veulent nous faire proscrire ? Environ trente Marchands anglois, dont quinze au plus sont domiciliés, qui sont les Proscrits ? Dix mille Chefs de famille, qui ne respirent, que la soumission aux Ordres de Votre Majesté, ou de ceux qui la représentent, qui ne connoissent point cette prétendue Liberté que l'on veut leur inspirer, de s'opposer à tous les Réglements, qui peuvent leur être avantageux, et qui ont assez d'intelligence pour Connoître que leur Interêt particulier les conduit plus que le Bien public—

En Effet que deviendroit le Bien Genéral de la Colonie, si ceux, qui en composent le Corps principal, en devenoient des Membres inutiles par la différence de la Religion ? Que deviendroit la Justice si ceux qui n'entendent point notre Langue, ny nos Coutûmes, en devenoient les Juges par le Ministere des Interprêtes ? Quelle Confusion ? Quels Frais mercenaires n'en résulteroient-ils point ? de Sujets protégés par Votre Majesté, nous deviendrons de véritables Esclaves ; une Vingtaine de Personnes, que nous n'entendons point, deviendroient les Maitres de nos Biens et de nos Interets, plus de Ressources pour nous dans les Personnes de Probité, aux quelles nous avions recours pour l'arrangement de nos affaires de famille, et qui en nous abandonnant, nous forceroient nous mêmes à préferer la Terre la plus ingrate à cette fertile que nous possedons.

Ce n'est point que nous ne soyons prêts de nous soumettre avec la plus respectueuse obéissance à tous les Réglements qui seront faits pour le bien et avantage de la

[1] The ordinance of Sept. 17th, 1764. See p. 149.
[2] The ordinance of Sept. 20th, 1764. See "Ordinances, made for the Province of Quebec, &c." 1767.

Colonie ; mais la Grace, que nous demandons, c'est que nous puissions les entendre : Notre Gouverneur et son Conseil nous ont fait part de ceux qui ont été rendus, ils sont pour le Bien de la Colonie, nous en avons temoigné notre reconnoissance ; et on fait souscrire à ceux qui nous représentent, comme un Mal, ce que nous avons trouvé pour un Bien !

Pour ne point abuser des Moments précieux de Votre Majesté, nous finissons par l'assurer, que sans avoir connu les Constitutions Angloises, nous avons depuis quatre Ans goûté la douceur du Gouvernement, la gouterions encore, si Mess^{rs} les Jurés anglois avoient autant de soumission pour les décisions sages du Gouverneur et de son Conseil, que nous en avons ; si par des Constitutions nouvelles, qu'ils veulent introduire pour nous rendre leurs Esclaves, ils ne cherchoient point à changer tout de suite l'ordre de la Justice et son Administration, s'ils ne vouloient pas nous faire discuter nos Droits de famille en Langues etrangères, et par là, nous priver des Personnes éclairées dans nos Coutumes, qui peuvent nous entendre, nous accommoder et rendre Justice à peu de frais en faisant leurs Efforts pour les empêcher même de conseiller leurs Patriotes pour la difference de Religion, ce que nous ne pouvons regarder que comme un Interêt particulier et sordide de ceux qui ont suggéré de pareils principes.

Nous supplions Sa Majesté avec la plus sincère et la plus respectueuse soumission de confirmer la Justice, qui a été établie pour déliberation du Gouverneur et Conseil pour les François, ainsy que les Jurés et tous autres de diverses Professions, de conserver les Notaires et Avocats dans leurs Fonctions, de nous permettre de rédiger nos Affaires de famille en notre Langue, et de suivre nos Coutumes, tant qu'elles ne seront point Contraires au Bien général de la Colonie, et que nous ayons en notre Langue une Loy promulguée et des Ordres de Votre Majesté, dont nous nous déclarons, avec le plus inviolable Respect,[1]

Les plus fideles Sujets

Amiot—Juré	J. Labroix (or Lauroix)	Lorrande Du Perrin (or Duperrin).
Boreau—Juré	Gueyraud	Laurain
Perrault Ch^{e} reg^{l}	Voyer (or Voyez)	Chrétien.
Tachet—Juré	F. Valin	P. Goyney.
Charest—Juré	Bellefaye (or Bellefincke)	Voyer (or Voyez)
Perrault—Juré	Rey	Le Maitre Lamorille
Boiret P^{tre} Superieur du Seminaire	Marchand	Franc Ruilly
	J. Lemoyne	Jean Baptiste Dufour
Dumond, Juré	Jean Amiot	Portneuf (or Borneuf)
Isel Becher. Curé de Quebec.	Bertran (or rem)	L. D. Dinnire (or ere)
Estesanne fils ayné	Gauvereau	Thomas Lec. (or Lee)
Conefroy.	Carpentier (or Charpeniser)	Soulard
Robins	Coocherar (or eer)	Parroix
LeFebure	Vallet	Riverin
Soupiran	Duttock	Liard fils—
Rousseau	Meux Vrosseaux	F^{s} Dambourgès
Petrimouly	H. Parent	Messuegué
Larocque	Ferrant	L. Dumas
Launiere	Boireux	Robins Fil
Alx^{re} Picard	Dusseil (or Dufiel)	Redout

[1] Apparently in consequence of these representations, an additional instruction to Murray was framed and sent in the latter part of 1764, although the exact date is not given. As contained in the Dartmouth Papers, it appears as follows :—

1764. Instructions to Murray. That the misconstruction of the proclamation of 7th October, 1763, be removed and that in making provision for the due and impartial administration of justice that there shall extend to all "subjects in general the protection and benefit of the British laws and constitution in "all cases where their Lives and Liberties are concerned. But shall not operate to take away from "the native Inhabitants the Benefit of their own Laws and Customs in Cases where Titles to Land, and "the modes of Descent, Alienation and Settlement are in Question, nor to preclude them from that share "in the Administration of Judicature, which both in Reason and Justice they are intitled to in Common "with the rest of our subjects." The proposed instructions with notes of alterations suggested. The instructions as finally sent are in the Colonial Office. Canadian Archives, Dartmouth Papers, M 383, p. 50.

CSL

Ginnie
Boileau
Delerenni
Liard (or Lard)
(Dubarois or)
Dubaril, Chirurgⁿ
Chartier de Lotbiniere
Asime
F. Duval
Hec. Keez
Huquet
Schindler
La Haurriong
Lerise
Panet
H. Loret
Berthelot (or elole)
Arnoux.
Neuveux
Laroche
Th. Caroux
Guichass
Jacques Hervieux negᵗ de Montreal
Guy de Montreal
J. Ferroux
S Jᵗ Meignot
Fromont
Fl. Cuynet
Gigon
Dennbefrire
Paul Marchand
Duvonuray
Sanguineer
Au. Bederd
Le C:ᵗᵉ Dupré l'aisne
S. George Dupré
Gᵗ des Milice de Montreal

Endorsed. Quebec

Copy of the Adress of the principal Inhabitants of Canada to the King, relative to the Establishment of Courts of Justice, and the Presentment of the Grand Jury

Original sent to His Majesty.

Read Janʳʸ 7. 1765

(Translation.)

To the King.

The true Glory of a Victorious King consists in assuring to the vanquished the same happiness and the same tranquillity in their Religion and in the possession of their property that they enjoyed before their defeat. We have enjoyed this Tranquillity even during the War, and it has increased since the establishment of Peace. Would that thus it had been secured to us! Deeply attached to our religion, we have sworn at the foot of the altar, unalterable fidelity to Your Majesty. From it we have never swerved and we swear anew that we never will swerve therefrom, although we should be in the future as unfortunate as we have been Happy: but how could we even be unhappy, after those tokens of paternal affection by which Your Majesty has given us the assurance that we shall never be disturbed in the Practice of our Religion.

It has seemed to us indeed from the manner in which Justice has been administered among us up to the present time, that it was His Majesty's Intention that the Customs of our Fathers should be adhered to, so that what was done before the Conquest of Canada should be adhered to in the future in so far as it was not opposed to the Laws of England, and to the public good.

Mr. Murray, who was appointed Governor of the Province of Quebec to the satisfaction of all its inhabitants, has up to the present time, at the head of a Military Council administered to us all the justice that we could have expected from the most enlightened jurists. This could hardly have been otherwise, Disinterestedness and Equity being the basis of their decisions.

For four years we enjoyed the greatest tranquillity. By what sudden stroke has it been taken away through the action of four or five jurists, whose character we respect, but who do not understand our language, and who expect us, as soon as they have spoken, to comprehend legal constructions which they have not yet explained, but to which we should always be ready to submit, as soon as we become acquainted with them, but how can we know them, if they are not delivered to us in our own tongue?

It follows, that we have seen with grief our fellow citizens imprisoned without being heard, and this at considerable expense ruinous alike to debtor and creditor; we have seen all the family affairs, which before were settled at slight expense, obstructed by individuals wishing to make them profitable to themselves, who know neither our language nor our customs and to whom it is only possible to speak, with guineas in one's hand.

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We hope to prove to your Majesty with all due submission the statements which we have the honour to lay before him.

Our Governor, at the Head of his Council, has issued an ordinance for the Establishment of Courts, by which we were rejoiced to see, that to assist us in the settlement of family and other matters, a Lower Court of Justice was to be established where all cases between Frenchman and Frenchman could be decided. We have seen that by another ordinance, to avoid lawsuits, cases decided by this court should be without appeal, unless they were of the value of three Hundred Pounds.

In proportion to the greatness of our Joy on seeing these wise regulations, was the distress with which we discovered that fifteen English Jurors as opposed to seven Jurors from the new Subjects had induced the latter to subscribe to Remonstrances in a language which they did not understand against these same Regulations. This is proved by their Remonstrances and Signatures of the evening before, in a Petition in which they urgently beg the Governor and his Council that their Judge may hold a sitting as their affairs were suffering for want of it.

With deep bitterness in our hearts we have seen, that after all the proofs of Your Majesty's Paternal Affection for your new Subjects, these same fifteen Jurors, with the assistance of the Lawyers have proscribed us as unfit, from differences of Religion, for any office in our country ; even Surgeons and Apothecaries (whose professions are free in all countries) being among the number.

Who are those who wish to have us proscribed ? About thirty English merchants, of whom fifteen at the most, are settled here. Who are the Proscribed ? Ten thousand Heads of Families who feel nothing but submission to the orders of Your Majesty, and of those who represent you, who do not recognize as such this socalled Liberty with which the other party desire to incite them to opposition to all the Regulations which might be to their advantage, and who have enough intelligence to see, that these persons are guided by their own Interest rather than the public good.

And in fact what would become of the general prosperity of the Colony, if those who form the principal section thereof, become incapable members of it through difference of Religion ? How would Justice be administered if those who understand neither our Language nor our Customs should become our Judges, through the Medium of Interpreters. What confusion, what Expenditure of Money would not result therefrom ? Instead of the favoured Subjects of Your Majesty, we should become veritable Slaves ; a Score of Persons whom we do not know would become the Masters of our Property and of our Interests ; We should have no further Redress from those equitable Men, to whom we have been accustomed to apply for the settlement of our Family Affairs, and who if they abandoned us, would cause us to prefer the most barren country to the fertile land we now possess.

It is not that we are not ready to submit with the most respectful obedience to all the Regulations which may be made for the Wellbeing and Prosperity of the Colony, but the favour which we ask is that we may be allowed to understand them. Our Governor and his Council have instructed us concerning those which have been already issued. They are for the good of the Colony, we have shown our Gratitude for the same, and yet now we are made to represent as a hardship by those who are speaking in our name, what we have found to be a benefit.

That we may not further encroach upon Your Majesty's Precious Time, we conclude by assuring You, that without knowing the English Constitution we have during the past four years, enjoyed the Beneficence of the Government, and we should still enjoy it, if Mess[rs] the English Jurors were as submissive to the wise decisions of the Governor and his Council, as we are ; if they were not seeking by new regulations, by the introduction of which they hope to make us their slaves, to change at once the order and administration of Justice, if they were not desirous of making us argue our Family Rights in a foreign tongue, and thereby depriving us of those Persons, who from their knowledge of our Customs, can understand us, settle our differences, and administer Justice at slight expense ; using every effort, on the plea of the difference of Religion, to prevent them even from acting as Counsel for their fellow countrymen. This we can only regard as due to the base anxiety for their own interests of those who have suggested such Principles.

GSL

We entreat Your Majesty with the deepest and most respectful submission to confirm the system of Justice which has been established for the French, by the deliberations of the Governor and Council, as also the Jurors and all others of different professions, to maintain the Notaries and advocates in the exercise of their functions, to permit us to transact our Family Affairs in our own tongue, to follow our customs, in so far as they are not opposed to the general Wellbeing of the Colony, and to grant that a Law may be published in our Language, together with the Orders of Your Majesty, whose most faithful Subjects, we do, with the most unalterable Respect, hereby declare Ourselves.

The most faithful Subjects

ORDINANCE OF NOV. 6th 1764.[1]

An ORDINANCE, For quieting People in their Possessions, and fixing the Age of Maturity.

Whereas it appears right and necessary, to quiet the Minds of the People, in Regard to their Possessions, and to remove every Doubt respecting the same, which may any Ways tend to excite and encourage vexatious Law-Suits; and until a Matter of so serious and complicated a Nature, fraught with many and great Difficulties, can be seriously considered, and such Measures therein taken, as may appear the most likely to promote the Well-fare and Prosperity of the Province in general, His Excellency, by and with the Advice and Consent of His Majesty's Council, *Doth hereby Ordain and Declare*, That until the tenth Day of *August* next, the Tenures of Lands, in Respect to such Grants as are prior to the Cession thereof, by the definitive Treaty of Peace, signed at *Paris* the tenth Day of *February*, One Thousand Seven Hundred and Sixty-three, and the Rights of Inheritance, as practised before that Period, in such Lands or Effects, of any Nature whatsoever, according to the Custom of this Country, shall remain to all Intents and Purposes the same, unless they shall be altered by some declared and positive Law; for which Purpose the present Ordinance shall serve as a Guide and Direction in all such Matters, to every Court of Record in this Province: Provided that nothing in this Ordinance contained shall extend, or be construed to extend to the Prejudice of the Rights of the Crown, or to debar His Majesty, His Heirs or Successors from obtaining, by due Course of Law, in any of His Courts of Record in this Province, according to the Laws of *Great-Britain*, any Lands or Tenements, which at any Time hereafter may be found to be vested in His Majesty, his Heirs or Successors, and in the Possession of any Grantee or Grantees, his, her, or their Assigns, or such as claim under them, by Virtue of any such Grants as aforesaid, or under Pretence thereof, or which hereafter may be found to have become forfeited to His Majesty, by Breach of all or any of the Conditions in such Grants respectively mentioned and contained.

And be it Ordained and Declared, by the Authority aforesaid, That from and after the first Day of *January*, One Thousand Seven Hundred and Sixty-five, every Person arrived at the Age of Twenty-one compleat Years, shall be deemed for the future of full Age and Maturity agreeable to the Laws of *England*, and shall be entituled to take full Possession from that Time of every Estate or Right to him belonging; in Consequence thereof to sue for the same, or bring to Account the Guardians, or other Persons who may have been entrusted therewith.

GIVEN *by His Excellency the Honorable* JAMES MURRAY, *Esq: Captain-General and Governor in Chief of the Province of* Quebec, *and Territories thereon depending in* America, *Vice Admiral of the same, Governor of the Town of* Quebec, *Colonel-Commandant of the Second Battalion of the Royal American Regiment,* &c. &c. *In Council,* at Quebec, *the 6th Day of* November, Anno, Domini, 1764, *and in the Fifth Year of the Reign of our Sovereign Lord* GEORGE *the* III. *by the Grace of* God, *of* Great-Britain, France *and* Ireland, *KING*, Defender of the Faith, &c. &c.

JA: MURRAY.

By Order of His Excellency in Council,

H: Kneller, *D:C:C:*

[1] "Ordinances, made for the Province of Quebec, by the Governor and Council, &c." Que. 1767, p. 18.

GOVERNOR MURRAY TO THE LORDS OF TRADE.[1]

QUEBEC 29th Oct^{r} 1764

MY LORDS

The inclosed papers will shew you the situation of affairs here and how necessary it is for me to send M^{r} Cramahe to London[2] that your Lordships may have the most Minute and Clearest Acc^{t} of every thing relating to this Province. An immediate Remedy seems necessary. To any thing I can write doubts may arise and misrepresentations may be made (which I find too frequently to be the case) the necessary delay to clear up such Doubts and misrepresentations by letters, may be dangerous. M^{r} Cramahé will answer every purpose, if properly attended too, he is thoroughly informed of all I know, no Man has the good of this Colony more at heart, no Man is more zealous for the Kings service and certainly there doth not exist a Man of more Integrity and Application.

Little, very little, will content the New Subjects but nothing will satisfy the Licentious Fanaticks[3] Trading here, but the expulsion of the Canadians who are perhaps the bravest and the best race upon the Globe, a Race, who cou'd they be indulged with a few priveledges w^{ch} the Laws of England deny to Roman Catholicks at home, wou'd soon get the better of every National Antipathy to their Conquerors and become the most faithful and most useful set of Men in this American Empire.

I flatter myself there will be some Remedy found out even in the Laws for the Relief of this People, if so, I am positive the populer clamours in England will not prevent the Humane Heart of the King from following its own Dictates. I am confident too my Royal Master will not blame the unanimous opinion of his Council here for the Ordonnance establishing the Courts of Justice,[4] as nothing less cou'd be done to prevent great numbers from emigrating directly, and certain I am, unless the Canadians are admitted on Jurys, and are allowed Judges and Lawyers who understand their Language his Majesty will lose the greatest part of this Valuable people.

I beg leave further to represent to your Lordship that a Lieu^{t} Governor at Montreal is absolutely necessary, that Town is in the Heart of the most populous part of the Province, it is surrounded by the Indian Nations and is one Hundred and Eighty miles from the Capitol, it is there that the most opulent Priests live, and there are settled the greatest part of the French Nobless, consequently every intrigue to our disadvantage will be laid and hatched there, The expence of a Lieu^{t} Governor will be a Trifle, I am positive for some years it will not exceed what will be necessary to procure intelligence in that District, This will be saved if a Man of Authority, Diligence and Observation is at the Head of it on the Spots and I do from the Zeal I have for his Majestys Service and the conviction of my heart, declare, that M^{r} Cramahé is the fittest man I know to fill that place; I am at least certain no body can be appointed who will be more agreeable to the new Subjects

I have the Hon^{r} to be with the greatest truth & regard.

My Lords,

Y^{r} Lordships' mo: Ob^{t} &^{ca}

The Lords of Trade & Plant^{n}. (Signed) JA: MURRAY

P.S. I have been informed that Mess^{rs} Will^{m} Mackenzie Alex^{r} Mckenzie and Will^{m} Grant have been sollicitting their Friends in London to prevail upon your Lordships to get them admitted into his Majestys Council of this Province. I think it my

[1] Canadian Archives; vol. Q 2, p. 233.

[2] Mr. H. T. Cramahé had been Civil Secretary for the District of Quebec, from the time that Gen. Murray had been appointed Lt. Governor, after the Conquest. When Canada, following the example of the older colonies, desired to appoint an agent in London, Mr. Cramahé was nominated for the position, in Feb. 1764. The appointment, however, was apparently not made. When civil government was established, in Aug. 1764, Mr. Cramahé became a member of the first Council of the Province.

[3] This letter and the following petitions incidentally reveal the very strained relations, extending to personal bitterness, which existed between Governor Murray and the British commercial element in the colony, and which led to the Governor's recall.

[4] The ordinance of Sept. 17th, 1764. See p. 149.

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Duty to acquaint your Lordships that the first of these Men is a notorious smugler and a Turbulent Man, the second a weak Man of Little character and the third a conceited Boy. In short it will be impossible to do Business with any of them

(signed) JA: MURRAY

The Lords of Trade & Plantations

PETITION OF THE QUEBEC TRADERS.[1]

To the King's Most Excellent Majesty

The Humble Petition of Your Majesty's most faithful and loyal Subjects, British Merchants and Traders in behalf of themselves and their fellow Subjects, Inhabitants of your Majesty's Province of Quebec

MAY IT PLEASE YOUR MAJESTY.

Confident of Your Majesty's Paternal Care and Protection extended even to the meanest and most distant of your Subjects, We humbly crave your Majesty's Gracious Attention to our present Grievances and Distresses

We presume to hope that your Majesty will be pleased to attribute our approaching your Royal Throne with disagreeable Complaints, to the Zeal and Attachment we have to your Majesty's Person and Government, and for the Liberties & Priviledges with which your Majesty has indulged all your Dutifull Subjects.

Our Settlement in this Country with respect to the greatest part of us; takes it's date from the Surrender of the Colony to your Majestys Arms; Since that Time we have much contributed to the advantage of our Mother Country, by causing an additional Increase to her Manufactures, and by a considerable Importation of them, diligently applied ourselves to Investigate and promote the Commercial Interests of this Province and render it flourishing

To Military Government, however oppressive and severely felt, we submitted without murmur, hoping Time with a Civil Establishment would remedy this Evil

With Peace we trusted to enjoy the Blessings of British Liberty, and happily reap the fruits of our Industry: but we should now despair of ever attaining those desirable ends, had we not Your Majesty's experienced Goodness to apply to.

The Ancient Inhabitants of the Country impoverished by the War, had little left wherewith to purchase their common necessaries but a Paper Currency[2] of very doubtfull Value: The Indian War[3] has suspended our Inland Trade for two years past, and both these Causes united have greatly injured our Commerce.

For the redress of which we repose wholly on your Majesty, not doubting but the Wisdom of your Majesty's Councils will in due time put the Paper Currency into a Course of certain and regular Payment, and the Vigour of Your Majesty's Arms terminate that War by a peace advantageous and durable.

We no less rely on your Majesty for the Redress of those Grievances we suffer from the Measures of Government practised in this your Majesty's Province, which are

The Deprivation of the open Trade declared by your Majesty's most gracious Proclamation, by the Appropriation of some of the most commodious Posts[4] of the Resort of the Savages, under the Pretext of their being your Majesty's private Domain.

The Enacting Ordinances Vexatious, Oppressive, unconstitutional, injurious to civil Liberty and the Protestant Cause.

Suppressing dutifull and becoming Remonstrances of your Majesty's Subjects against these Ordinances in Silence and Contempt.

[1] Canadian Archives; vol. B 8, p. 6.

[2] This paper currency was issued by the Intendants under the French Regime, and especially by the last of them, the notorious Bigot. Its redemption by the French Government was at this time the subject of special negotiations.

[3] Pontiac's Rebellion.

[4] For the previous condition of these posts, see Murray's Report of 1762, p. 42.

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

The Governor instead of acting agreeable to that confidence reposed in him by your Majesty, in giving a favorable Reception to those of your Majesty's Subjects, who petition and apply to him on such important Occasions as require it, doth frequently treat them with a Rage and Rudeness of Language and Demeanor, as dishonorable to the Trust he holds of your Majesty as painful to those who suffer from it.

His further adding to this by most flagrant Partialities, by formenting Parties and taking measures to keep your Majesty's old and new Subjects divided from one another, by encouraging the latter to apply for Judges of their own National Language.

His endeavouring to quash the Indictment against Claude Panet (his Agent in this Attempt who laboured to inflame the Minds of the People against your Majesty's British Subjects) found by a very Worthy Grand Inquest, and causing their other judicious and honest Presentments to be answered from the Bench with a Contemptuous Ridicule.

This discountenancing the Protestant Religion by almost a Total Neglect of Attendance upon the Service of the Church, leaving the Protestants to this Day destitute of a place of Worship appropriated to themselves.

The Burthen of these Grievances from Government is so much the more severely felt, because of the natural Poverty of the Country; the Products of it been extremely unequal to support its Consumption of Imports.

Hence our Trade is miserably confined and distressed, so that we lye under the utmost Necessity of the Aids and Succours of Government, as well from Our Mother Country as that of the Province, in the Place of having to contend against Oppression and Restraint.

We could enumerate many more Sufferings which render the Lives of your Majesty's Subjects, especially your Majesty's loyal British Subjects, in the Province so very unhappy that we must be under the Necessity of removing from it, unless timely prevented by a Removal of the present Governor.

Your Petitioners therefore most humbly pray your Majesty to take the Premises into your gracious Consideration, and to appoint a Governor over us, acquainted with other maxims of Government than Military only; And for the better Security of your Majesty's dutiful and loyal Subjects, in the Possession and Continuance of their Rights and Liberties, we beg leave also most humbly to petition that it may please your Majesty, to order a House of Representatives to be chosen in this as in other your Majesty's Provinces; there being a number more than Sufficient of Loyal and well affected Protestants, exclusive of military Officers, to form a competent and respectable House of Assembly; and your Majesty's new Subjects, if your Majesty shall think fit, may be allowed to elect Protestants without burdening them with such Oaths as in their present mode of thinking they cannot conscientiously take.

We doubt not but the good Effects of these measures will soon appear, by the Province becoming flourishing and your Majesty's People in it happy. And for Your Majesty and your Royal House your Petitioners as in Duty bound shall ever pray &ca &ca

Sam[l] Sills
Edw[d] Harrison
Eleaz[r] Levy
Ja[s] Shepherd
John Watmough.
John Ord.
Geo. Allsoopp.
W[m] Mackenzie.
B Comte.
Peter Faneuil.
Geo Fulton.
John Danser.
Ja[s] Jeffry.
Ja[s] Johnston.
Tho[s] Story.
Dan[l] Bayne.
John Purss.
Alex[r] M[c]Kenzie
Geo Measam
J[n] A. Gastineau
Ph. Payn.

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PETITION OF THE LONDON MERCHANTS.[1]

To the Kings most excellent Majesty.—

The humble Petition of your Majesty's most dutiful Subjects, the Merchants and others now residing in London Interested in and trading unto the Province of Canada in North America, on behalf of themselves and others trading to and Interested in the said Colonys by way of Supplement to the Petition hereunto annexed Intitled the humble Petition of your Majesty's most faithful and Loyal Subjects British Merchants and Traders in behalf of themselves and their fellow Subjects Inhabiting your Majesty's Province of Quebec

MAY IT PLEASE YOUR MAJESTY,

We whose names are hereunto subscribed do most humbly certify to your Majesty that Several of us have in our possession a Variety of Original Letters from divers of our Friends and correspondents now residing in Canada and whose names are not subscribed to the Address annexed which confirm the truth of the several Allegations contained in the said Address. We do verily believe the said Allegations to be true and doubt not but in due time shall be enabled to prove the same when your Majesty in your great wisdom shall think proper to direct.

And from the said Original Letters in our possession we do likewise believe that the said Address would have been signed by almost all your Majesty's British as well as French subjects in Canada but for fear of incurring the displeasure and resentment of such of your Majesty's Officers and Servants as may deem themselves reflected upon thereby.

We therefore most humbly join with our fellow Subjects of Canada in their Petition to your Majesty and further most humbly pray.

That the Government of those your Majesty's Dominions may be at least put upon the same footing with the rest of your Majesty's American Colonies or upon any other footing that may be thought Essential for the preservation of the Lives Liberties and Properties of all your Majesty's most faithfull Subjects as well as for the increase and support of the Infant Commerce to and from that Part of the World.

And Your Petitioners as in duty bound shall ever pray. &c. &c. &c.

Capel & Osgood Hanbury,
John Buchanan,
David Barclay & Sons
Anthony Merry.
Lane & Booth
Bissons & Metcalfes,
J^h Masfen,
Crafton & Colson
Wal^r Jenkins & C^o,
Pooley & Fletcher,
Wakefield Willett & Pratt.
John Cartwright,
Mauduit Wright & C^o
James Bond,
Mildred & Roberts
Barnards & Harrison,
Nash Eddowes & Petrie,
Webb & Sampson,
Brindleys Wright & Co
Jn^o Liotard & Giles Godin,
Gregory Olive
Neate & Pigon,
Rich^d Neave & Son
John Strettell
Isidore Lynch & Co.

[1] Canadian Archives; vol. B 8, p. 10.

GSL

SESSIONAL PAPER No. 18

REPORT OF ATTY. AND SOL. GEN. *RE* STATUS OF ROMAN CATHOLIC SUBJECTS.[1]

To the Right Honourable the Lords Commissioners for Trade and Plantations.

MAY IT PLEASE YOUR LORDSHIPS,

In Obedience to your Lordships Commands Signifyed to me by M^r Pownall's Letter of the 7 Instant, directing us to consider, and Report to your Lordships our Opinion, whether His Majesty's Subjects, being Roman Catholicks, and residing in the Countries, ceded to His Majesty, in America, by the Definitive Treaty of Paris, are, or are not subject, in those Colonies, to the incapacities, disabilities, and Penalties, to which Roman Catholicks in this Kingdom, are subject by the Laws thereof;

We have taken M^r Pownall's Letter into our Consideration, and are humbly of Opinion, that His Majesty's Roman Catholick Subjects residing in the Countries, ceded to His Majesty in America, by the Definitive Treaty of Paris, are not subject, in those Colonies, to the Incapacities, disabilities, and Penalties, to which Roman Catholicks in this Kingdom are subject by the Laws thereof.

All which is humbly submitted to Your Lordships Consideration

FL^r NORTON
W^m DE GREY

Lincolns Inn
10^th June 1765

Endorsed:—Copy of the Attorney and Sollicitor Generals Report

REPRESENTATION OF THE BOARD OF TRADE, TO THE KING'S MOST EXCELLENT MAJESTY.[2]

MAY IT PLEASE YOUR MAJESTY,

Our Predecessors in Office having in a Report to the Lords of the Committee of Your Majesty's most Honorable Privy Council of the 30^th of May last, submitted to their Lordships consideration, a Plan for the Regulation of Ecclesiastical affairs in Quebec, and we having in a like Report[3] to their Lordships of this Day's Date[3] submitted Our Opinion and Propositions in respect to the Constitutions of Judicature, and other Civil Establishments in that Province,[3] it appears to us that their Lordships have now before them, for their Consideration and decision, all those matters regarding the Constitution and form of Government, both Ecclesiastical and Civil, *which are of the greatest Importance in the present State of that Colony, and upon which the Welfare of Government and the Happiness of Your Majesty's Subjects there depend.

*judicial in B. of T. Canada N° 15.

Two great and important Considerations do yet however remain to be submitted to Your Majesty; Viz^t

First,—The Propriety of calling a General Assembly, consisting of the Governor, the Council, and a House of Representatives, of which third Estate the situation and Circumstances of the Colony have not hitherto been thought to admit.

[1] Canadian Archives, Dartmouth Papers; M 383, p. 69.

[2] Canadian Archives; B 8, p. 13. The marginal notes refer to variations in the text in other copies of this document in the Public Record Office.

[3] The special report here referred to does not accompany this document, nor has it yet been found elsewhere. Its character may be gathered from the recapitulation and discussion of its chief recommendations in the report of Yorke and De Grey. See p. 174.

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Secondly,—The repeated Complaints made by many of Your Majesty's Subjects there, and by the Principal Merchants trading to that Colony here, of Oppression and Misconduct in Your Majesty's Governor.

Upon the first of these Propositions, the only Objection to which, as we conceive, must arise out of the Present State of the Province, the Bulk of the Inhabitants of which being Roman Catholicks cannot, under the Regulations* of your Majesty's Commission, be admitted as Representatives in such an Assembly; We beg leave to represent, that if the whole Province was to be divided into three Districts or Counties, of which the Cities of Quebec and Montreal, and the Town of Trois Rivieres were to be the Capitals, We apprehend there would be found a sufficient number of Persons in each County qualified to serve as Representatives, and in the Choice of whom all the Inhabitants of such County might join; seeing that we know of no Law by which Roman Catholicks, as such, are disqualified from being Electors.

*Regulation in B. T. 15.

Such a Measure would, we submit give great Satisfaction to your Majesty's New as well as the Natural-Born Subjects; every Object of Civil Government, to which the limited Powers* of the Governor and Council cannot extend, would be fully answered; and above all, that essential and important one, of establishing by an equal Taxation a permanent and Constitutional Revenue, answering to all the exigencies of the State,* upon such an Estimate as your Majesty, shall, with the Advice of your Servants, direct to be laid before them.

*Power in B. T. 15.

*Estate in Haldim copy.

As to what regards the Complaints exhibited against Your Majesty's Governor, they relate to such a Variety of Circumstances and Facts, of which we neither have, nor can have sufficient Information here, and do* refer themselves so much to the General State of Publick Measures there, that we are humbly of Opinion, that it will be most advisable, as well in regard to the Publick Interest, as in Justice to all Parties, that the said Complaints should be transmitted to Your Majesty's Governor, with Directions to return to this Kingdom, in order to give Your Majesty an Account of the State of the Colony;[1] and that in the mean time a proper person should be authorized to administer Government there, under the Character and with the appointment of Lieutenant Governor

*to in Haldimand copy.

Which is most humbly submitted.

DARTMOUTH		JOHN YORKE
	Signed	
SOAME JENYNS		J. DYSON

Whitehall 2nd Sepr 1765.

An ORDINANCE, *To alter and amend an Ordinance of His Excellency the Governor and His Majesty's Council of this Province, passed the Seventeenth Day of* September 1764.[2]

Whereas by an Ordinance of His Excellency the Governor and His Majesty's Council of this Province, made and passed the Seventeenth Day of September, 1764, Intitled, *An Ordinance for regulating and establishing the Courts of Judicature in this Province*; His Majesty's has most graciously been pleased to signify His Royal Will

[1] On Oct. 24th, 1765, General H. S. Conway, who had succeeded the Earl of Halifax as Secretary of State for the Southern Department, July 12th, 1765, wrote to Murray that, in consequence of representations of disorders in the colony, he was to prepare to return to give an account of the Province. On April 1st of the following year he was formally recalled. He departed from Canada on the 28th of June, 1766, leaving Col. P. Aemilius Irving, President of the Council, as acting Governor until the arrival of Col. Guy Carleton. See Canadian Archives, Q 2, p. 464, and Q 3, pp. 14 & 173.

[2] "Ordinances, made for the Province of Quebec, by the Governor and Council of the said Province, &c." Quebec, 1767. p. 72. Given also in Canadian Archives, Q 62 A 2, p. 515.

and Pleasure therein, by an additional Instruction[1] to His said Excellency the Governor, "That the Welfare and Happiness of His loving Subjects in this Province, " which will ever be Objects of His Royal Care and Attention, do require that the said " Ordinance should be altered and amended in several Provisions of it, which tend to " restrain His Canadian Subjects in those Privileges they are intituled to enjoy in com- " mon with his natural born Subjects:" And therefore it is His further Royal Will and Pleasure, That it should be declared, And by His Honour the President of His Majesty's Council, by and with the Advice, Consent and Assistance of His Majesty's Council of this Province, and by the Authority of the same, *It is hereby Ordained and Declared,* That all His Majesty's Subjects in the said Province of *Quebec,* without Distinction, are intituled to be impannelled, and to sit and act as Jurors, in all Causes civil and criminal cognizable by any of the Courts or Judicatures within the said Province.

And for the more equal and impartial Distribution of Justice, *Be it further Ordained and Declared, by the Authority aforesaid,* That in all civil Causes or Actions between British born Subjects and British born Subjects, the Juries in such Causes or Actions are to be composed of British born Subjects only: And that in all Causes or Actions between Canadians and Canadians, the Juries are to be composed of Canadians only; and that in all Causes or Actions between British born Subjects and Canadians, the Juries are to be composed of an equal Number of each, if it be required by either of the Parties in any of the abovementioned Instances.

And be it further Ordained and Declared, by the Authority aforesaid, That His Majesty's Canadian Subjects shall and are hereby permitted and allowed, to practice as Barristers, Advocates, Attornies and Proctors, in all or any of the Courts within the said Province, under such Regulations as shall be prescribed by the said Courts respectively for Persons in general under those Descriptions.

And be it further Ordained and Declared, by the Authority aforesaid, That this Ordinance shall continue in Force until His Majesty's Pleasure be further known herein; and that so much of the said Ordinance of the said Seventeenth of *September,* 1764, as is not hereby altered and changed, shall and is hereby declared to be temporary only.

GIVEN by the Honorable PAULUS ÆMILIUS IRVING, *Esq; President of His Majesty's Council, Commander in Chief of this Province, and Lieutenant-Colonel of His Majesty's Army, at the Castle of* Saint Lewis, *in the City of* QUEBEC, *this 1st Day of* July, *in the Sixth Year of His Majesty's Reign, and in the Year of Our Lord One Thousand Seven Hundred and Sixty-six.*

P: ÆMIs. IRVING.

By Order of the Commander in Chief of the Province,
JA. POTTS, D.C.C.

[1] The additional instruction here referred to runs as follows:—"Additional Instructions to Our trusty and well beloved the Honorable James Murray Esquire, Our Captain General & Governor in Chief in and over Our Province of Quebec and the Territories depending thereon in America. Given at Our Court at St. James's the Day of

"We having taken into Our Royal Consideration the Ordinance enacted & published by you, on the 17th day of Septr 1764 for Establishing Courts of Judicature in Our Province of Quebec; & it appearing to Us that the Welfare and Happiness of Our loving Subjects there, which will ever be Objects of our Care & Attention, do require, that the said Ordinance should be altered & amended in several Provisions of it, which tend to restrain Our Canadian Subjects in those Privileges they are entitled to enjoy in common with our Natural born Subjects; It is therefore Our Royal Will & Pleasure, & you are hereby directed & required, forthwith upon the Receipt of this our Instruction, to Enact and Publish an Ordinance, declaring that all Our Subjects in our said Province of Quebec, without Distinction, &c." The remainder is given in the ordinance. This instruction was approved in Council, 17th Feb., 1766. See Canadian Archives, Dartmouth Papers, M. 383, p. 152.

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An *ORDINANCE, In Addition to an Ordinance of His* EXCELLENCY *the Governor and Council of this Province, of the Seventeenth of* September, *1764, intituled,* "*An* "*Ordinance for regulating and establishing the Courts of Judicature in this Province.*"[1]

WHEREAS it has been often complained of, That there being no more than two Terms in the Year, appointed for holding His Majesty's Supreme-Court of Judicature, and Courts of Common-Pleas within this Province, is a Delay in obtaining Justice, and a great Prejudice to publick Credit; for Remedy whereof, *Be it Ordained and Declared, by His Honour the President and Commander in Chief of this Province, by and with the Advice, Consent and Assistance of His Majesty's Council, and by Authority of the same, It is hereby Ordained and Declared,* That a new Term is by Virtue of this Ordinance established and added to the two former Terms, called Hillary and Trinity Terms, which said new Term shall be called Michaelmas Term, and shall commence and be held yearly, for the Dispatch of publick Business in the said Supreme Courts and Courts of Common-Pleas respectively, on every Fifteenth Day of *October*, with the same Number of Return Days therein as is practised in the said two other Terms, called Hillary and Trinity Terms, with the same Liberty of appealing from the Judgments therein to be given, and all other Rights and Privileges as is and are established by an Ordinance of His Excellency the Governor and Council of this Province, of the Seventeenth of *September*, 1764, Intituled, "An Ordinance for regulating and establishing the Courts of Judicature in this Province," or by any other Ordinance in Addition to or in Amendment or Explanation thereof: And all Writs and Process whatsoever hereafter to be lawfully and regularly sued out of any of the said Courts, and made returnable the first or any other Return-Day of the said Term, called Michaelmas, by this Ordinance established, are hereby declared to be good and valid.

GIVEN by the Honorable PAULUS ÆMILIUS IRVING, *Esq; President of His Majesty's Council, Commander in Chief of this Province, and Lieutenant-Colonel of His Majesty's Army, at the Castle of* Saint Lewis, *in the City of* QUEBEC, *this 26th Day of* July, *in the Sixth Year of His Majesty's Reign, and in the Year of Our Lord One Thousand Seven Hundred and Sixty-six.*

P: ÆMIs. IRVING.

By Order of the Commander in Chief of the Province,
JA. POTTS, D.C.C.

REPORT OF ATTORNEY AND SOLICITOR GENERAL REGARDING THE CIVIL GOVERNMENT OF QUEBEC.[2]

To The Right honble the Lords of the
Committee of Council for Plantation affairs.

MY LORDS,—In humble obedience to your Order of the 19th of Novemr last wherein it is recited, that his Majesty having been pleased, to refer to your Lordships several memorials and Petitions from His Majesty's Subjects in Canada as well British as French, complaining of several of the Ordinances and proceedings of the Governor and Council of Quebec, and of the present Establishment of Courts of Judicature, and other Civil Constitutions; Your Lordships had on that Day, taken the said paper into your Consideration, together with a Report[3] made thereupon by the Lords Commrs for Trade and plantations dated the 2d Septr last and finding that the said Lords Commrs had proposed another System of Judicature to be substituted in lieu of that which is now subsisting You thought it proper to Order, That the said Memorials Petitions, and Reports (which were thereunto annexd) should be referr'd to Us, to consider and Report Our Opinion, and observations thereon, together with such alterations to be made in what is proposed in the said Report of the Lords Commrs for Trade and plantations,

[1] "Ordinances, made for the Province of Quebec, &c." 1767. p. 79. Given also in Canadian Archives, Q. 62 A pt. 2, p. 518.
[2] Canadian Archives, Dartmouth Papers, M 383, p. 170.
[3] See note 3, p. 171.

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and such other regulations & propositions, as we should think fitt to suggest for the forming a proper plan of Civil Government for the said province of Quebeck; and to that end we were directed to take into our Consideration such parts of the annex't report of Governor Murray,[1] upon the state of the said province as relate to the Civil Government thereof whilst the same was Annex'd to the Crown of France, And were also required to send for Lewis Cramahé[2] Esq^r Secretary to Governor Murray and Fowler Walker Esq^r Ag nt for the said Province of Quebec, who were Order'd to attend us from time to time, to give us such further Lights and information as might be requisite for the purpose aforementioned.

We have perused the several papers referr'd to us, together with the said two Reports and have also been attended by the Gentlemen named in your Order; and upon the whole matter, beg leave humbly to submit to your Lordships such Reflections as have occurred to us in the Course of that imperfect consideration, which we have been Able at this Busy Season of the year to give to the Great subject of the *Civil Government* of Quebec and the propositions made by the Lords Commrs of *Trade and plantations.*

My Lords, it is evident that Two very principal sources of the Disorders in the province have been. 1^st The attempt to carry on the Administration of Justice without the aid of the natives, not merely in new forms, but totally in an unknown tongue, by which means the partys Understood Nothing of what was pleaded or determined having neither Canadian Advocates or Sollicitors to Conduct their Causes, nor Canadian jurors to give Verdicts, even in Causes between Canadians only, Nor Judges Conversant in the French Language to declare the Law, and to pronounce Judgement; This must cause the Real Mischiefs of Ignorance, oppression and Corruption, or else what is almost equal in Government to the mischiefs themselves, the suspicion and Imputation of them.

The second and great source of disorders was the Alarm taken at the Construction put upon his Majesty's Proclamation of Oct. 7^th 1763. As if it were his Royal Intentions by his Judges and Officers in that Country, at once to abolish all the usages and Customs of Canada, with the rough hand of a Conqueror rather than with the true Spirit of a Lawful Sovereign, and not so much to extend the protection and Benefit of his English Laws to His new subjects, by securing their Lives, Liberty's and propertys with more certainty than in former times, as to impose new, unnecessary and arbitrary Rules, especially in the Titles to Land, and in the modes of Descent, Alienation and Settlement, which tend to confound and subvert rights, instead of supporting them.

1^st To the *first* of these Evils the Order made by your Lordships on the 15^th of Nov^r last founded on the Report of the Lords Commrs of Trades and plantations, requiring the Gov^r & Commander in Chief of the province (by an additional Instruction) to Publish an Ordinance for admitting Canadian Jurors, in the several Cases therein express'd, and for permitting Canadian, Advocates, Attorneys, and Proctors, under proper regulations, provides an adequate Remedy.[3]

2^d To the *Second* Evil the Lords Commrs of Trade and plantations by their Report, have apply'd themselves with great Care, ability and Judgement, to suggest Remedys, by pointing out the defects in the late Ordinance of Sept^r 1764 and reforming the Constitution of Justice; We concur with their Lord^sps in the objections made to the Ordinance; And upon the several articles of the *Plan* laid Down in that report, the following observations Occur to Us, both for the Confirmation and Improvement of them.

1^st The *first* Article proposes a Court of Chancery consisting of the Gov^r and Council, who shall also be a Co rt of Appeals, from whom an appeal will lie to the King in Council; By this Article the Lords of Trade very rightly mean to Invest the Gov^r and Council with Two different Jurisdictions; The *One* as a Court of Equity, to give relief originally in that Capacity the other as a Court of Errors, to review in the second Instance the Judgements of the Court of Common Law, mentioned in the next Article.

[1] See p. 40.
[2] See note 2, p. 167.
[3] See Ordinance of July 1st., 1766; p. 172.

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2^d^ The *Second* Article proposes a *Superior Court* of Ordinary Jurisdiction, uniting all the proper powers in Criminal and Civil Cases and matters of Revenue, in this Court, it is recommended that a Chief Justice should preside, Assisted by three puisne Judges; These are required to be conversant in the French Language, and that one of them particularly should be knowing in the French usages.

This proposition appears to us well conceive'd; and we submit to your Lordships, whether it may not be adviseable, that they should be instructed to confer sometimes with the Canadian Lawyers most respected for Learning, Integrity and Conduct, who may prove of the greatest assistance to English Judges. Competent Salarys for the Encouragement of Able and Worthy men seem absolutely necessary in this Establishment, with a due distinction between the Chief Justice and his Brethren. The new Judge of Vice Admiralty for America has appointments of £800 per Annum.

3^d^ The *Third* Article relates to *Terms* for the sitting of the Superior Court at Quebec, either according to the Terms appointed at Westminster, or as may be more convenient. This matter must be accomodated to the Seasons, Climate and convenience of the people in their Tillage and other General employments, therefore it seems proper to be left to the future Judgement of the Gov^r^ Chief Justice, and Principal servants of the Crown, entrusted with the Government of the province and ought to be fix'd by *Ordinance*.

4^th^ The *Fourth* Article proposes *four Sessions* of Assize, Oyer and Terminer, and Goal Delivery at *Quebec*, with like special Commissions, once or oftener in the year at *Trois Rivieres* and *Montréal*. We submit to your Lordships, that it may be unnecessary to lay down any particular Rules for holding *four* Sessions in the manner mentioned at *Quebec*; because all Civil and Criminal Causes arising in that District may be tried at Bar in Term time, or (as the legal Expression is) in *Bank* By Order of the Judges, or under the General powers of the supreme Court, As to the *Circuit Courts* to be held *once*, or perhaps *twice* in the year (which seems better) at *Trois Rivieres* and *Montreal*, We think, that it may be proper to require that the Judges shall continue in each of those places, at the least, for a Certain Number of Days to give time and opportunity for the resort of partys and the convenient Dispatch of Business, in like manner as was done by Henry the 8^th^ in establishing the Courts of Great Sessions for Wales, and by the Parliament in his late Maj^ts^ Reign, when the Circuit Courts were settled for Scotland.

5^th^ The Fifth Article recommends the Distribution of the province into three Countys or Districts, of which, *Quebec*, *Montreal*, and *Trois Rivieres* shall be the three Capital Towns, and that an Annual sheriff shall be named for each.

We are humbly of opinion that this Distribution of the province is more natural and convenient than the plan lately followed by the Governor and Council, and it will be more agreeable to the People, as it is conformable to their Antient Division of the Country. But considering the difficulty of procuring English and protestant sheriffs, especially at *Trois Rivieres* (where at present only Two persons who are half pay Officers reside thus qualified) it may deserve consideration whether such Sheriff should not serve longer than one year, till such time as the gradual increase of Inhabitants may facilitate an Annual Rotation; or whether the Annual Sheriff of *Quebec* may not also serve that office for *Trois Rivieres* This will oblige him, to appoint two Deputys or under Sheriffs, that is one for each District, And if this method be taken, the Sheriff may be made an Annual Officer, because *Quebec* can afford sufficient number of proper persons to supply the Rotation, and *Montreal*. (it is agreed) Can do the like.

6^th^ The *Sixth* Article proposes to give the Justices of Peace in the three several Districts, at their General Quarter Sessions, Power to determine finally all causes not exceeding the value of *Ten pounds* (the Title to Lands not being in Question) with a Jury where it exceeds *Five pounds* and without one where it falls under that sum, it gives also to Two Justices in Petty Sessions, similar Authority in similar cases, where the value of the matter in dispute is not more than Forty Shillings. The latter Authority appears to us well proposed; but we submit, whether it may not be better to reserve the Jurisdiction in matters exceeding that value as far as *Ten* pounds to be determined in *Quebec*, By proceeding in nature of the Civil Bill in Ireland before the

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Judges of the superior Court, or by proceeding in Nature of the summary Bench; Actions at Barbadoes, and in like manner in the Circuit Courts at *Trois Rivieres* and *Montreal* twice in the year; The value of *Ten* pounds is considerable in such a Colony and the reputation of the Justices of Peace is, as yet scarce enough establish'd for such a Jurisdiction; Under this *Article* We beg leave to suggest that in the Commission of the Peace for each District it may be useful and popular and endear his Majesty's Government to his new Subjects; if *one* or *Two* Canadians should be appointed Justices, with the others who are British, particularly if Protestants can be found fit for that Office.

7th The seventh and last point mentioned in the Report of the Lords of Trade, on which we shall observe, is that *Article*, wherein they propose, that in all Cases where *Rights* and *Claims* are founded on events prior to the Conquest of *Canada* the several Courts shall be Govern'd in their proceedings, by the French usages and Customs which have heretofore prevailed in respect to such property.

This proposition is undoubtedly right, as far as it goes, in respect of Cases which happen'd, antecedent to the Conquest; but we beg leave to take Occasion from hence, to enlarge a little on this subject of the Rule of Judgement to be observed in the Courts of *Quebec* as it is of the greatest moment to the honor and Justice of the Crown, and to the Peace and prosperity of the Province.

There is not a *Maxim* of the *Common Law* more certain than that a Conquer'd people retain their antient Customs till the Conqueror shall declare New Laws. To change at once the Laws and manners of a settled Country must be attended with hardship and Violence; and therefore wise Conquerors having provided for the security of their Dominion, proceed gently and indulge their Conquer'd subjects in all local Customs which are in their own nature indifferent, and which have been received as rules of property or have obtained the force of Laws. It is the more material that this policy be persued in *Canada*; because it is a great and antient Colony long settled and much Cultivated, by French Subjects, who now inhabit it to the number of Eighty or one hundred thousand. Therefore we are humbly of opinion, that the Judges to be employed by his Majesty in this province will answer all the ends of their trust, both as to the King and to the people, if their conduct in Judicature be modell'd by the following *General* Rules.

1st *First* in all *personal* actions grounded upon Debts, promises, Contracts and Agreements, whether of a Mercantile or other nature, and upon *wrongs* proper to be compensated in damages, to reflect that the substantial *maxims* of Law and Justice are every where the same. The modes of proceeding and Trial, and perhaps in some degree also the strict Rules of Evidence may vary, but the Judges in the province of *Quebec* cannot materially err, either against the Laws of England, or the antient Customs of Canada; if in such Cases they look to those substantial maxims.

2d *Secondly* in all suits or Actions relating to Titles of Land, the Descent, Alienation, Settlements and incumberances of *Real* property, We are humbly of opinion, that it would be oppressive to disturb without much and wise deliberation and the Aid of Laws hereafter to be enacted in the province the local Customs and Usages now prevailing there; to introduce at one Stroke the English Law of Real Estates, with English modes of Conveyancing Rules of Descent and Construction of Deeds, must occasion infinite confusion and Injustice. British Subjects who purchase Lands there, may and ought to conform to the fix'd *local* Rules of Property in Canada, as they do in particular parts of the Realm. or in the other Dominions of the Crown. The English Judges sent from hence may soon instruct themselves by the assistance of Canadian Lawyers and intelligent Persons in such Rules, and may Judge by the *Customs* of Canada, as your Lordships do in Causes from Jersey by the Custom of Normandy; It seems reasonable also, that the rules for the Distribution of personal property in Cases of Intestacy and the modes of assigning and Conveying. It should be adhered too for the present.

3d *Thirdly* in all suits entertained before the Govr and Council, as a Court of Chancery or Equity, it is obvious, that the General Rules of Law and Justice must be the same as in the other Courts, according to the subject matter of the suit with this

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difference only, that the relief is more compleat and specific and adapted to supply the Defects, or allay the Rigor of those Rules.

4th *Fourthly* in Criminal Cases, whether they be *Capital* Offences or *misdemeanors*, it is highly fitting (as far as may be) that the Laws of England be adapted in the Discription and Quality of the offence itself, in the manner of proceeding to charge the party to Bail or detain him. The Certainty, the Lenity of the English Administration of Justice and the Benefits of this Constitution will be more peculiarly and essentially felt by his Majesty's Canadian Subjects, in matters of Crown Law, which touch the Life, Liberty and Property of the Subject, than in the conformity of his Courts to the English Rules of *Real* and Personal Estates.

This Certainty and this Lenity are the *Benefits* intended by his Majesty's Royal proclamation, so far as concerns Judicature. *These* are *Irrevocably* Granted and ought to be secured to his Canadian subjects, according to his Royal Word. For this purpose it may not be improper upon the appointment of a new Govr with a *new Commission* revised and Consider'd by your Lordships, to direct that Governor to publish an explanatory proclamation in the Province, to quiet the minds of the People as to the true meaning of the Royal proclamation of Octr 1763 in Respect to their local Customs and usages, more especially in Titles of Land and Cases of Real property.

5th *Fifthly* in Rules of *process* and the *Practice* of the *Courts*. We beg leave to suggest, that it may be expedient to order the new Chief Justice,[1] with the assistance of the other Judges, to be appointed and the Attorney General[2] of Quebec to consider, and prepare a suitable *Plan* adapted to the Jurisdiction of the different Courts, and the convenience of the Suitors. The Forms of proceeding out to be simple easy and as summary and expeditious as may consist with the advancement of right and the protection of Innocen e. useful hints may be taken not only from the supreme Courts of Westminster, but from the practice of the Courts in Wales, and from many of the Colonys. Some time will be necessary, before such a plan can be framed and experience alone can perfect it. As soon as they shall have prepared it, the Governor and Council may *enact* it by an *Ordinance* and transmit the same in the accustomed manner, to be laid before his Majesty for his Royal approbation.

All which is humbly submitted &ca

C. YORKE

Wm DE GREY

April 14th 1766

Endorsed:—Report of the Attorney and Sollicitor General, relative to the Civil Government of the province of Quebec. 13th May 1766.

Read at the Committee and the Board of Trade Order'd to prepare a draught of an additional Instruction thereupon &c.

N° 9.

1 On Feb. 5th, 1766, an official notice from the Secretary of State was sent to Chief Justice Gregory, stating that in consequence of his conduct His Majesty had no further occasion for his services and that Mr. Wm. Hey was appointed to succeed him. On the 17th of the same month, an official notice was sent to the Governor of Quebec that Hey had been appointed to succeed Gregory as Chief Justice, and directing that he should be invested with the office. See Q 3, pp. 1 & 2. For Hey's Commission as Chief Justice, see p. 190.

2 On March 6th, official notice from the Secretary of State was sent to Geo. Suckling that there being no further occasion for his services as Attorney General, Mr. Francis Maseres is appointed to succeed him. On March 18th official notice was also sent to the Governor of Quebec, of the appointment of Maseres in the place of Suckling. See Q 3, pp. 3 & 4.

Of Gregory and Suckling Murray reported, that "our chief Judge and Attorney General are both entirely ignorant of the Language of the Natives, are needy in their Circumstances and tho' perhaps good Lawyers and Men of integrity, are ignorant of the World, consequently readier to Puzzle and create Difficultys then remove them." Q 2, p. 378.

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CONSIDERATIONS ON THE EXPEDIENCY OF PROCURING AN ACT OF PARLIAMENT FOR THE SETTLEMENT OF THE PROVINCE OF QUEBEC (BY BARON MASERES) LONDON PRINTED IN THE YEAR MDCCLXVI.[1]

The Difficulties that have arisen in the government of the province of Quebec, and which are likely still to occur in it, notwithstanding the best intentions of those who are intrusted by His Majesty with the administration of affairs there, are so many and so great that the Officers, whom His Majesty has been pleased of late to nominate to the principal departments in that government, cannot look upon them without the greatest uneasiness and apprehension, and despair of being able to overcome them without the assistance of an act of Parliament to ground and justify their proceedings. Two nations are to be kept in peace and harmony, and moulded, as it were, into one, that are at present of opposite religions, ignorant of each others language, and inclined in their affections to different systems of laws. The bulk of the inhabitants are hitherto either French from old France, or native Canadians, that speak only the French language, being, as it is thought, about ninety thousand souls, or as the French represent it in their Memorial, ten thousand heads of families. The rest of the inhabitants are natives of Great Britain or Ireland, or of the British dominions in North-America, and are at present only about six hundred souls; but, if the province is governed in such a manner as to give satisfaction to the inhabitants, will probably every day increase in number by the accession of new settlers for the sake of trade and planting, so that in time they may equal or exceed the number of the French. The French are almost uniformly Roman Catholics: there were only three Protestant families among them at the time of the conquest of the province; and probably that number is not much increased among them, as no endeavours have been used for their conversion. But, what is more to be lamented, is that they are violently bigotted to the Popish religion, and look upon all Protestants with an eye of detestation. This unhappy circumstance has been, and is still likely to be, a ground of enmity and disunion between the old and new inhabitants. The French insist, not only upon a toleration of the public worship, but on a share in the administration of Justice, as jury-men and justices of the peace, and the like, and on a right, in common with the English, of being appointed to all the offices of the government. The English, on the contrary, affirm, that the laws of England made against the Papists ought to be in force there, and consequently that the native Canadians, unless they think proper to turn Protestants, ought to be excluded from all those offices and various branches of power, and in some degree they seem to be supported in this opinion by a part of the governor's commission; I mean that part which enables him to call and constitute a general assembly of the freeholders and planters of the province: for it is there expressly provided, that no person elected to serve in such an assembly, shall sit and vote there till he has subscribed the declaration against Popery prescribed by the statute 25. Car. 2 which would effectually exclude all the Canadians.

Toleration of the Roman Catholic Religion.

The grounds upon which the French demand a toleration of the Catholic religion, are partly the reasonableness of the thing itself, they being almost universally of that religion, and partly the stipulation made on that behalf

[1] Francis Maseres was appointed Attorney General of the Province of Quebec early in March 1766, though his Commission, as issued at Quebec under the authority of Governor Carleton, is dated Sept. 25th, 1766. These "Considerations" were written by Maseres before he went to Quebec, and are of interest not only for the points with which they deal, but in comparison with other important papers afterwards published by him and relating to the question of the government and laws of the Province of Quebec. Representative examples of his later proposals and discussions are included in this volume.

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in the fourth article of the definitive treaty of peace, and which is expressed in these words: "His Britannic Majesty on his side agrees to grant the "liberty of the Catholic religion to the inhabitants of Canada; he will "consequently give the most effectual orders that his new Roman Catho-"lic subjects may profess the worship of their religion, according to the "rites of the Romish church, as far as the laws of Great Britain permit."

These last words, "as far as the laws of Great Britain permit," render the whole stipulation in favour of this toleration very doubtful; for it may reasonably be contended, that the laws of England do not at all permit the exercise of the Catholic religion.

For in the first place, these words seem to refer to some degree of toleration of the Catholic religion, already actually subsisting in some part of the British dominions, and by virtue of the laws of Great Britain; and if so, they convey no right to any toleration at all, because no degree of toleration is already actually allowed by the laws of Great Britain in any part of the British dominions.

2^{dly}, Supposing these words not to refer to any toleration of the Catholic religion now actually subsisting by virtue of the laws of Great Britain, but to mean only such a degree of toleration as (though it does not actually subsist in any of the British dominions by virtue of the laws of Great Britain, yet) may subsist without a breach of the laws of Great Britain, yet still there will be great reason to think that the laws of Great Britain do not permit this toleration in any degree. For in the first place, the stat. of 1 Eliz. cap. i. for restoring the supremacy in ecclesiastical matters to the Crown, expressly extends to all the Queen's future dominions, as well as to those belonging to the Crown at the time of making the act. The words of the 16th section are as follows: "Be it enacted, &^{c} that no foreign "prince, person, prelate, &^{c} spiritual or temporal, shall at any time here-"after use or exercise any manner of power or jurisdiction, spiritual or "ecclesiastical, within this realm, or within any other your Majesty's "dominions, or countries, that now be, or *hereafter shall be*, but shall be "clearly abolished out of this realm, and all other your highness's domi-"nions for ever." And in the next section, all this ecclesiastical jurisdiction or supremacy, is united and annexed for ever to the Crown. It is clear therefore that the King is, by the laws of Great Britain, supreme head of the church in the province of Quebec, as well as in England itself. Now it is the very essence of Popery, that the Pope, and not the King, is supreme in all spiritual matters. Consequently this essential article of Popery cannot, by virtue of the stipulation in the definitive treaty, be tolerated; but all appeals to the Pope, all exercises of ecclesiastical authority in Quebec, by the Pope, or his legates, or any other person commissioned by him, all nominations to benefices, or to the bishoprick of the province, (which is a power the Pope has hitherto exercised, at least so far as to approve the bishop before he entered upon the functions of his office) must now be illegal and void.

But this act goes a great deal further; for it requires all ecclesiastical persons whatsoever, and likewise all lay-persons holding temporal offices, or employed in the service of the Crown, and likewise all persons holding lands of the Crown, and doing homage for them, to take the oath of supremacy to the Queen, or her successors, under pain of losing their benefices, or temporal offices, &^{c} and this not only in the realm of England, but in any of the Queen's highness's dominions. So that by this part of the act, all the Canadian clergy, and a great part of the laity, might be required to take the oath of supremacy, which it is well known the most moderate Catholics cannot take, it being contrary to the fundamental article of their religion; for the difference between the moderate Catholics and the more furious and zealous Papists, who are mostly guided by the Jesuits, consists

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principally in this circumstance, that the latter ascribe to the Pope an unlimited power in temporal as well as spiritual matters, and affirm that he may depose kings, and absolve subjects from their allegiance, and do other the like extravagant mischiefs; whereas the former deny his temporal, and acknowledge only his spiritual supremacy.

It is true indeed, this oath of supremacy is taken away by the stat. 1 Will. cap. 8. But another shorter oath of supremacy, (containing a mere denial of the Spiritual, or Ecclesiastical power of the Pope, or any other foreign Prince, and which is therefore*) equally contrary to the sentiments of all Roman-Catholics, is appointed to be taken in its stead, and by the same persons, and under the same penalties, as before.

It appears therefore, from the statute 1. Eliz. cap. i. alone, without considering any other of the laws against Popery, that the exercise of the Popish religion cannot be tolerated in the province of Quebec, consistently with the laws of England; and consequently that it cannot be tolerated there at all by virtue of the stipulation of the definitive treaty above-mentioned, because that stipulation has an express reference to the laws of England.

Further by the next act in the statute-book, or stat. 1 Eliz. cap. ii. for the uniformity of common-prayer and service, it is enacted, "That every "minister of a parish-church, &c within this realm of England, Wales, "and marches of the same, or *other the Queen's dominions*, shall be bound "to use the book of common-prayer, and shall use no other service, under "pain of incurring certain heavy penalties."

By this act, the mass is prohibited in all parish-churches in all her Majesty's dominions.

This act does not indeed say expressly, as the former does, that it shall extend to all her Majesty's dominions that hereafter shall be, as well as those that at present are, belonging to the Crown of England. But there is reason to believe it meant so; or at least there is room for doubt. And if it does mean so, the mass is prohibited by it in the province of Quebec.

Upon these reasons we may conclude, that the exercise of the Catholic religion cannot, consistently with the laws of Great Britain, be tolerated in the province of Quebec.

Yet that it should be tolerated is surely very reasonable, and to be wished by all lovers of peace and justice and liberty of conscience.

By what authority then shall it be tolerated? this is the only question that remains. Shall the King alone undertake to tolerate it? will it be adviseable that he should exercise, though for so good an end, a power of dispensing with the laws? will it not give room to a thousand censures and odious reflections and comparisons? The authority of Parliament seems to be a much safer foundation to establish this measure upon, in a manner which neither the new English inhabitants of the province can Contest, nor the French Catholics suspect to be inadequate.

Settlement of the Laws.

The next great difficulty that occurs, is the settlement of the laws, by which the province of Quebec is for the future to be governed. The law upon this subject seems to be this; 1st, That the laws of the conquered continue in force till the will of the conqueror is declared to the contrary; this follows from the necessity of the case, since otherwise the conquered provinces would be governed by no laws at all. 2dly, That after the declaration of the will of the conqueror, the conquered are to be governed by such laws as the conqueror shall think fit to impose, whether those are the old laws by which they have been governed before, or the laws by which the conquerors are governed themselves, or partly one, and partly the other, or a new set of laws different from both. 3dly, That by the conqueror is to be understood the conquering nation, that is, in the present case, the Bri-

* The words in parenthesis do not appear in the manuscript copy in the Canadian Archives Q 56 1, pp. 124-151, but are given in a printed version published in 1809.

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tish nation; that consequently by the will of the conqueror is to be understood the will of the British nation, which in all matters relating to legislation is Expressed by the King and Parliament, as in all matters relating to the executive power it is expressed by the King alone; that therefore the Parliament only have a power to make laws for the province of Quebec, or to introduce any part of the laws of Great Britain there, or to delegate such a power of making or introducing laws to any other hands, notwithstanding it may happen that in fact such a power may inadvertently have been delegated to the governor and council of the province by a private instruction of the King alone. For if the contrary doctrine were true, that the King alone had the whole legislative power in the province of Quebec, it would follow, that not only all the conquered Canadians, but all the new English settlers there, would become slaves or subjects to an absolute and arbitrary government, the moment they set their foot there. The King might introduce the severest laws, and most cruel punishments, the inquisition, the rack, and the wheel, and might make all his subjects there, both old and new, tenants at will of their lands and other property, and tax them in any degree whensoever he thought fit. He might keep a standing army there, without consent of Parliament, and raise money to pay them by his own authority, and with such an army, a prince of James II's. disposition, might oppress the liberties of the other adjoining colonies, or even of Great Britain itself. These are dreadful consequences, but follow clearly from such a doctrine; for which reason the doctrine itself ought not to be maintained. The other opinion, that the conquered people, when once ceded to the Crown of Great Britain, are thereby admitted to be British Subjects, and immediately intitled to participate of the liberties of other British Subjects, and are therefore to be governed according to the rules of the limited monarchy of Great Britain, by which the executive power is vested solely in the King, but the power of making laws and raising taxes in the King and Parliament, is a much safer and more reasonable opinion.

It is therefore to be wished, that an Act of Parliament might be obtained that at once declared what laws should take place in the province of Quebec, whether the laws of the conquered, or the laws of Great Britain, or some of the laws of the conquered, and some of the laws of Great Britain; Or whether any other laws should be introduced there, more peculiarly fitted to the circumstances of the province; and if any, then what laws should be so introduced: Or, if this detail be thought too troublesome for the Parliament to enter upon, and their informations concerning the state of the province should be deemed to be as yet too imperfect to enable them to go through such a business with propriety, then it is to be wished that an act of Parliament may be obtained, by which such a legislative power of making laws and ordinances for the good government of the province might be delegated to the governor and council, as has been already exercised by them by virtue of an instruction from the King alone. By such a delegated parliamentary authority, they may enquire into the state of the Canadian laws and customs already in force there, and may revise them and reduce them into writing, and enact such of them as shall be found beneficial to the province, and fit to be continued; and may introduce such parts of the laws of England, as they shall think to be for the advantage of the province; and likewise as occasion offers, make such other new laws and regulations as shall be necessary for the good government of it: And in so doing they will have a due regard to the heads of advice suggested by Mr. Attorney Yorke, and to such other intimations and instructions as the government shall think proper to communicate to them. And lest this legislative power should be abused or injudiciously executed by the governor and council, there might be a clause in the act of Parliament directing them to transmit these several laws

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and ordinances to the King and Privy Council in England, to be by His Majesty in council allowed or disallowed, as his Majesty shall see cause. Only they should be in force till disallowed, and, if not disallowed within a certain time, as for instance two years, they should then be in force for ever, unless repealed by act of Parliament. Laws and ordinances founded on such a parliamentary authority will easily find obedience from the people, which it is to be feared no others will; and the judges of the province will carry them into execution with ten times as much spirit and confidence as if they were doubtful of their legal validity.

Suppose a Criminal in Canada to be guilty of an offence that is capital by the laws of England, but is not so by the laws of Canada that have hitherto been received, (a supposition that is no way difficult as the criminal law of England abounds with capital offences) in what manner shall such a man be punished, unless there is a parliamentary declaration determining the punishment that shall attend his crime? Could any lesser authority warrant the infliction of death for such a crime? Or would any judge chuse, though he should be sure of never being called to account for it, to pass such a sentence without the highest authority? But if the punishments of crimes be settled by authority of Parliament, whether immediately by the Parliament itself, or mediately by ordinances made by the governor and council of the province, by virtue of a legislative authority communicated to them by act of parliament, the judges will be under no other difficulty what punishments to inflict upon the several criminals, that come before them, than they are in Great Britain itself.

Some persons are of opinion, that the laws of Great Britain do at once take place in a conquered province, without any authoritative introduction of them, either by the King, or Parliament. But this opinion seems destitute of foundation, and is sufficiently refuted by the advice of the learned Mr Yorke,[1] His Majesty's attorney-general, who has advised that the Canadians should be permitted to retain their own laws, relating to inheritances and the alienation of their real estates, which would be impossible without an act of Parliament for that purpose, if the whole System of the laws of England did ipso facto become the law of the province upon its being conquered, or ceded to the Crown. Indeed, the whole system of the laws of England, taken in the gross, and without a selection, would be by no means a blessing to the Canadians. The game-laws, the poor-laws, the fictions and subtleties in various sorts of actions and conveyances, the niceties arising from the doctrine of uses, and the tedious and operose instruments founded on them, would really be a great misfortune to them; and from their novelty and strangeness, would be thought to be a much greater. This doctrine therefore of the instant validity of the whole mass of the laws of England throughout the conquered Province cannot be true. And if the whole system of those laws is not valid there, then certainly no part of them can be so. For if they are, then who shall distinguish which of them are valid there and which are not?

It may therefore be concluded, as at first, that none of the laws of England are valid in the conquered province ipso facto by virtue of the conquest, or cession, without a positive introduction there by a sufficient authority: and this sufficient authority seems, for the reasons already mentioned, to be only the Parliament of Great Britain.

Settlement of the Revenue.

The next great difficulty that calls loudly for the interposition of Parliament, is the low state of the revenue of the province of Quebec. Under the French government this revenue amounted to about thirteen thousand pounds per annum, but is now sunk to less than three thousand. The cause of this is the change in the course of trade, by which means it falls

[1] See Report of Yorke and de Grey on the Civil Government of Quebec, p. 174.

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out, that those taxes which produced the principal part of the revenue, now, though still in force, produce nothing at all. The principal of those taxes was a duty upon French wines, which were imported there from old France in great quantities. This single duty produced 8000l. a year; now it produces nothing, because no wines are allowed to be imported there from old France. Nor would it be replaced by an increase of the consumption of Spanish or Portuguese wines, supposing the tax might be construed to extend to those wines; for the Canadians do not like them, and will not drink them. From a like cause, another duty which formerly made a considerable part of the public revenue, which was a duty upon French brandies imported from old France, and French rums imported from the French West-India Islands, now produces nothing at all. From these causes the revenue is sunk so low that it is insufficient to defray the expence of the civil government, though the establishment of it is so very moderate. It is therefore become necessary, either for the treasury of England to issue a sufficient annual Sum to make good the salaries of the several officers of the government, or that some new tax should be imposed upon the inhabitants, in aid of those which by reason of these accidents have failed, sufficient for all the purposes of the government. If this latter method should be adopted, it is presumed that the authority of Parliament will be the proper power to have recourse to, that there may be no colour or pretence for contesting the legality of the taxes so imposed. This power also the Parliament may exercise, either immediately itself by imposing a tax upon the province of Quebec this very session, before the Parliament rises, or it may delegate to the governor and council a power to impose such taxes as they shall find necessary for the support of the government, subject, as above, to the disallowance of the King and Privy Council, in order to prevent abuses, and with proper clauses of restriction and appropriation of the money so raised, in order to prevent a misapplication of it, either by the Officers of the province, or at home.

If the Parliament should think proper itself to lay a tax upon the Province, information has been received from persons well acquainted with the state and trade of the province, that British spirits would be the commodity that could best bear a duty, and would produce the best revenue; that there are annually imported into the province about 250,000 gallons of these spirits, and that they might bear a duty of three-pence a gallon without hurting the trade, but not more; and this would produce about 3000l. a year.

The malicious and desperate enemies of an upright and popular Administration, may perhaps traduce such a measure as inconsistent with their late indulgent conduct with respect to the other American colonies in the late repeal of the stamp-act. But the difference of the cases is too striking to make such a calumny in the least degree formidable. The other American colonies have internal legislatures of their own, who have been permitted, ever since their first establishment, to be the assessors of all their internal taxes; and, as they had not abused this privilege with which they had been so long indulged, and further, as their exercising this privilege seemed to be no way prejudicial to the mother-country, it seemed to have been a harsh and ungracious measure in the Parliament, by the advice of the late ministry, to revive and exert a dormant and inherent right of taxing them; which however the whole Parliament, excepting a very few members of both houses, have highly declared themselves to be possessed of. But the Canadians have no such internal legislature, no such usage of taxing themselves by representatives of their own chusing. Unless therefore they have the singular privilege of not being liable to be taxed at all, they must be liable to be taxed either by the King alone, or by the King and Parliament; and the milder of these two opinions is, that they are taxable by the King and

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Parliament. Those therefore who should promote the taxing them by authority of Parliament, would act like the truest friends to civil liberty, and with the same spirit of mildness and moderation that conducted them in the repeal of the stamp-act.

If it should be said, that the province of Quebec ought to have an assembly in the same manner as the other American colonies, and that the taxes ought to be imposed by the consent of such an assembly, it will be sufficient for the present purpose, and to support the measure here suggested of taxing them by authority of Parliament, to answer, that as yet no such assembly has been constituted; and till an assembly is erected, whether that time be short or long, the safest and mildest method of imposing taxes is to do it by authority of Parliament.

Of an Assembly

As to the erecting an assembly in that province, it is a measure which probably will not for some years to come be found expedient. If an assembly were now to be constituted, and the directions in the governor's commission, above alluded to, were to be observed, by which none of the members elected there are to be permitted to sit and vote in the assembly till they have subscribed the declaration against Popery, it would amount to an exclusion of all the Canadians, that is, of the bulk of the settled inhabitants of the province—[1] An assembly so constituted, might pretend to be a representative of the people there, but in truth it would be a representative of only the 600 new English settlers, and an instrument in their hands of domineering over the 90,000 French. Can such an assembly be thought just or expedient, or likely to produce harmony and friendship between the two nations? Surely it must have a contrary effect.

On the other hand, it might be dangerous in these early days of their submission, to admit the Canadians themselves to so great a degree of power. Bigotted, as they are, to the Popish religion, unacquainted with, and hitherto prejudiced against the laws and customs of England, they would be very unlikely for some years to come, to promote such measures, as should gradually introduce the Protestant religion, the use of the English language, of the spirit of the British laws. It is more probable they would check all such endeavours, and quarrel with the governor and council, or with the English members of the assembly, for promoting them. Add to

[1] This question arose in a very practical form in the island of Grenada, which, together with Canada, was transferred from France to England by the Treaty of 1763. It was referred to Attorney General Yorke for his opinion, in 1766. The case and opinion are summarised as follows:—"Case submitted to the Hon. C. Yorke with regard to Grenada, where the French residents have taken the oaths of allegiance, supremacy, and abjuration, but cannot make the declaration against transubstantiation. Of the 24 members composing the Assembly, they desire to have six chosen out of their own people; and of the 12 members in Council, they desire two; and one justice of the peace in each quarter, of which there are four; and they are now applying to the Administration to be indulged in these respects, In the Leeward Islands, Barbadoes, and Jamaica, they do not admit a person to be of the Council, Assembly, or a justice of the peace, but such as not only take the oaths of allegiance, supremacy, and abjuration (which all the French at Grenada have done), but also subscribe the declaration against transubstantiation; and in Grenada they follow the same rule. The questions submitted are—

"I. 'Can or ought the Act directing the test, made so long before the conquest of these countries, inhabited by Roman Catholics only, to be considered as a prohibitory law, excluding every Roman Catholic from any civil office in his own country? Or ought it to be considered as a law of Great Britain not extending to conquests?'

"II. 'Is it in the power of the King, on any good consideration, to dispense with the test against transubstantiation in his new subjects in these conquered countries, either for ever or for any certain time? Or can this test be dispensed with by Act of Parliament only?'

"Mr. Yorke's reply is written on the blank pages of the 'case' submitted to him, apparently by his own hand. He says that in the new conquests, ceded by the late treaty, it is matter of political judgment whether His Majesty will require it to be taken by all persons who may become members of the Assembly or Council, or be appointed justices of the peace; but that the statute does not extend to them. The treaty of peace stipulates only the free exercise and toleration of the Roman Catholic religion in the countries ceded by France. His Majesty is still the judge whether he will demand the test from persons employed in offices of trust, or in any function relating to Government, so as to exclude his new subjects from any share in it. French Papists will readily enough renounce the supremacy of the Pope, and disclaim a foreign ecclesiastical jurisdiction; but the test relates to a tenet of their religion and worship and therefore cannot in conscience be taken by them.

"It is mentioned that Canada was inhabited by 80,000 French Roman Catholics, and 200 or 300 English only." Calendar of Home Office Papers; 1766-1769, No. 403.

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this, that they are almost universally ignorant of the English language, so as to be absolutely incapable of debating in it, and consequently must, if such an assembly were erected, carry on the business of it in the French language, which would tend to perpetuate that language, and with it their prejudices and affections to their former masters, and postpone to a very distant time, perhaps for ever, that coalition of the two nations, or the melting down the French nation into the English in point of language, affections, religion, and laws, which is so much to be wished for, and which otherwise a generation or two may perhaps effect, if proper measures are taken for that purpose. And further it may be observed, that the Canadians themselves do not desire an assembly, but are contented to be protected in the enjoyment of their religion, liberties, and properties, under the administration of his Majesty's governor and council. If, to give a proper stability to this mode of government, it is carried on by authority of Parliament, and is properly superintended, as no doubt it will be, by the wisdom of his Majesty's Privy-Council, they will think themselves extremely happy under it. The persons who most desire the immediate constitution of an assembly, are some of the six hundred English adventurers, who probably are ambitious of displaying their parts and eloquence in the characters of leading Assemblymen.

But if an assembly is to be constituted, even this too had better be done by act of Parliament than by the King's single authority, as it is no less than severing from the general body of his Majesty's dominions a particular part of them, with respect to the purposes of making laws and imposing taxes. Could the King, if he thought proper, and a particular county of England was to desire it of him, sever that county from the rest of England, and no longer summon any of its members to Parliament, but instead thereof constitute a little Parliament in that County itself, that should make laws and lay taxes for the inhabitants of that single county? It is presumed that he could not: and the erecting an assembly in a conquered province is an act of much the same nature. It is true indeed, that some of the American charters and assemblies owe their rise to this authority: but this was in the reign of the Stuarts, who were fond of extending their prerogative; and, on account of the inconsiderableness of the colonies at that time, these things were then unnoticed; so that they do not prove the strict legality of the practice. Since that time these charters have been put in practice by the colonies, and acquiesced in by the mother-country, and in some measure recognized in Parliament; and this usage, acquiescence and recognition, are in truth their best support.

But if an assembly is to be constituted, in which the Catholics or Canadians are to be admitted, (as in justice and reason they ought to be, if any assembly at all is to be erected) the authority of Parliament seems to be still more necessary to give validity to such a measure.

For the reasons that have been just now mentioned, it seems evident, that the measure of erecting an assembly in the province of Quebec is somewhat premature. How soon it will become expedient and proper, experience only can shew. But in the mean time, however short that time may be, it seems necessary to have recourse to the authority of Parliament for settling the government of the province, and removing the difficulties that obstruct the settlement in the three great articles of Religion, Law, and Revenue. It is therefore the humble request of all the gentlemen who have lately been appointed to the principal offices in the government of Quebec, to his Majesty's Ministers of State, that they would use their influence and endeavours to procure such an act of Parliament as they shall upon the whole matter think to be necessary, to remove the difficulties that have been stated, and to enable the said gentlemen to administer the government of that province in their several departments, with security to themselves, and advantage to the province.

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ACTING GOVERNOR IRVING TO THE LORDS OF TRADE.[1]

Copy.
QUEBEC 20th August 1766.

MY LORDS,

As the Courts of Justice are now sitting, I have an opportunity to observe the good Effects of the Additional Instruction,[2] which, by assuring to the Canadians the Priviledge of being Jurors, and of having Lawyers that can speak their own Language, has contributed very much to quiet their minds, not a little alarmed by the long Delay which the matters that Captain Cramahé was charged with, met with in London. All that to me seems wanting at present, is a permanency to the inferior Court, and an Augmentation of the Terms of its sitting. The Slowness of the Proceedings of the Superior Court, has rendered the inferior one of great Utility to the Publick, and the small Fees taken in it, have prevented the people from becoming the Prey of attornies. The Chief Difficulty that has occurred is what happens in appeals from it to the Superior Court; as the Proceedings are threatened to be reversed on Account of deviation from the English Form, without entering into the merits of the Cause, or the Reasons upon which the Judgment was founded: The Canadian Advocates must have been inspired to have been able in so short a time to comply with Forms to which they were all Strangers, especially as the Ordinance directing the Nature of Proceedings in that Court has never been published, on Account of the uncertainty the Council was in, whether His Majesty would approve of what had already been done in these Matters or not.

Governor Murray had the Honor last Summer to transmit to your Lordships a Plan given by the Attorney General for the Administration of Justice, and agreable to that of Halifax. It appear'd to the Council rational and Simple. It is to be hoped the new Chief Justice will bring over full Instructions relative to these Matters.

As there are no Protestants residing in the distant parts of the Province, who are in any respect fit to be made Justices of the Peace, it would be very usefull, if a Latitude could be given to increase a little the Power of the Bailliffs in these places.

Some more certain Authority to the Judges of the Inferior Court to adhere to the Coutume de Paris in their Decisions would render the present System of administ'ring Justice easy to the people, and a certain, though moderate, method to introduce our Laws, as far as they are favorable to Liberty, into the Province. The Government here, tho' they wish to secure the People's Possessions, and the Peace of their Families by adhering to their Customs and Usages, relative to the tenure of their Lands, and their manner of Succession, are far from intending that the Judges should have the same arbitrary power of proceeding as the French Judges had; a Power, which is always dangerous, and which I am certain the Judges, named by Governor Murray for the inferior Court, are very far from aspiring after.

In order to expedite Business, as well as forward the levying the Duties ordered by His Majesty in Council, to be continued in this Province, an Additional Term has been found necessary, as you will see by an Ordinance,[3] which I have the honor to Enclose to your Lordships, as well as one proposed for regulating pilotage in the River Saint Lawrence; this last has not been published, as before next Season there will be sufficient time for your Lordships to signify either your Approbation or disapprobation of it; a Circumstance, that I could wish would attend every Ordinance, as appeals are always attended with Inconvenience.

[1] Canadian Archives Q 3, p. 249.
[2] See Ordinance of July 1st, 1766, and note to same, p. 172.
[3] See Ordinance of July 26th, 1766, p. 174.

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I send you a Copy of the Attorney General's Report, relative to the Difficulties attending the levying the Duties[1] ordered by His Majesty in Council, to be continued in this Province.

I have the honor to be with much Respect,
My Lords,
Your Lordships most obedient humble Servant.

P. ÆMI[s] IRVING.

To the Right Honorable the Lords Commissioners for Trade and Plantations.

PETITION OF SEIGNEURS OF MONTREAL.[2]

AU ROY.

Les Seigneurs des terres et proprietaires des fiefs du district de Montréal en la province de Quebec, au pied du throne de Votre Majesté penetrés de la plus vive Reconnoissance, de toutes les marques de Bonté, dont il a plût à Votre Majesté, de les favoriser depuis qu'ils sont sous Votre Domination, Ozent prendre la Liberté, de lui présenter icy leurs très humbles actions de Grace en leurs Noms et Celuy de leurs tenanciers.

Le Soin vraiment paternel, que Votre Majesté n'a cessé d'apporter pour leurs Interets temporels, La Grace Signallée de posseder un Eveque, a excité dans le Cœur de tous les Nouveaux sujets les plus vifs sentiments de recconnoissance, D'amour et de fidelité envers Votre Majesté.

Ils Ne Sont pas moins sensibles à la derniere preuve de Votre tendresse, dont ils ont ressenty les gracieux effets dans la revoccation de L'acte des timbres.[3]

Ils Supplient Votre Gracieuse Majesté, qu'il leur soit Permis, de la remercier de leur avoir Donné pour Gouverneur L'honnorable Jacques Muray.. ils ozent esperer qu'elle voudra Bien leur Conserver, ce Digne Gouverneur, ses lumieres son Equitté sa prudence luy fournissent toujours des moyens efficaces pour maintenir les peuples dans la tranquillité et l'obeissance.

Les Marques de la Bonté d'un Roy, souvent réiterées en font toujours esperer de Nouvelles ; c'est sur cela Qu'ils ozent luy Demander Deux graces, elles mettroient le Comble aux faveurs de Votre Majesté, et à leur Reconnoissance, & leur attachement.

LA PREMIERE, est la supression du Régisterre, dont les frais epuisent la Colonie sans quelle, en recoive Le moindre avantage.

LA SECONDE est que tous les Sujets en cette province sans aucune Distinction de Religion soient admis à toutes les Charges sans autre Choix, que les talents et le meritte personnel, etre exclus par Etat d'y participer, n'est pas Etre membre de l'estat, s'ils en ressent l'humiliation, ils ne connoissent pas moins le prix d'une grace aussy Distinguée,, pour laquelle Ils ne peuvent offrir que des Cœurs pleins d'Amour et de Recconnoissance, Leur Zele, leur attachement et leur fidelité en seront les preuves marquées dans tous les tems a venir

PERPETUELLEMENT, leurs discours, et leurs exemples tendront à maintenir leurs tenanciers dans les sentiments de la fidelité et soumission Qu'ils vous doivent, ils offriront sans cesse leurs prieres et leurs vœux pour la Gloire et la Conservation de Votre Majesté et de votre auguste famille.

Le Chv[r] D'ailleboust	Dailleboust De Caisy
D'Chambault	St. Ours
Lacorne	Montizambert
Ninerville	Blanau
Rouville	dandeguee

[1] This report is given in Canadian Archives, Q 3, p. 254. In the same volume will be found several other papers on this subject.

[2] Canadian Archives, Q 4, p. 31.

[3] Referring to Grenville's Stamp Act, passed in 1765 and which applied to Canada as well as to th other American colonies. It was repealed in March 1766.

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Neveu	Lavalterie	
lefebvre	Boucherville	
Montenon	J. de Muy	
Normand	Chev. Hertel	
Linctot	Pierre Lesieu (r)	MS torn
Hertel	And. Barril	
Duchesny	Godfroy	
Duchesne	Normanvi (lle)	MS torn
Le Cher Ninerville	God. Tonnancoth (r)	MS torn
Crosse	le febvre	
J. Courval	Desisles	
La Grenier (frenier ?)	Beaulac	
Crevier	L. Descheneaux.	
St. françois	J. Descheneaux.	
poisson	Gentilly.	

Endorsed:—Petition to The King from the Principal People of Montreal R/ 3d Febry 1767.

(Translation.)

TO THE KING.

The Seigneurs of the lands and proprietors of the fiefs of the district of Montreal, in the province of Quebec, at the foot of Your Majesty's throne, filled with the deepest Gratitude for all the marks of Favour with which it has pleased Your Majesty to honour them, since they have been under Your Government, Dare to take the Liberty of here presenting to You their most humble supplications in their own Names and those of their tenants.

The truly paternal Care which your Majesty has never ceased to bestow on their temporal Interests, and the signal Favour of possessing a Bishop have roused, in the hearts of all the New subjects the liveliest sentiments of gratitude, of love, and of fidelity toward Your Majesty.

They are no less sensible of the last proof of Your affection, of which they have experienced the beneficial effects, in the revocation of the stamp act.

They beg Your Gracious Majesty that they may be permitted to thank You for having given them as Governor, the honourable James Murray, they dare to hope that You will graciously continue to them this Worthy Governor whose clearsightedness, Equity and wisdom continually afford him efficacious means for maintaining the people in tranquillity and obedience.

The frequently repeated Marks of a King's Goodness, always give ground for the hope of fresh ones, and it is on this ground that they dare plead for two privileges. These would fill up the measure of your Majesty's favours, & of their gratitude & devotion.

The first is the supression of the Register, the expenses of which exhaust the Colony, without its receiving from it the least advantage.

The second is that all the subjects in this province without any Distinction of Religion may be admitted to any Office, the only basis of selection being that of capacity and personal merit. To be excluded by the State from participating in it, is not to be a member of the state. If they feel such a humiliation they would appreciate all the more the value of a favour equally marked, for which they can only offer their hearts full of love and gratitude. Their Zeal, their affection and their devotion shall be the signal proofs of it for all time to come.

Their precepts and their examples shall perpetually tend to maintain their tenants in the sentiments of fidelity and submission which they owe you, They will offer without ceasing their vows and their prayers for the Glory and Preservation of Your Majesty and your august family.

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COMMISSION OF THE CHIEF JUSTICE.[1]

Quebec ss.

GEORGE THE THIRD by the Grace of God, of Great Britain, France, and Ireland, KING, Defender of the Faith, and so forth ; To our Trusty and well beloved WILLIAM HEY, Esquire, GREETING.

Commission to be Chief Justice of the province of Quebec

Power to inquire of all treasons, felonies, and other offences ;

and the same to hear and determine according to the laws of England and the ordinances of the province hereafter to be made.

KNOW YE, that we having taken into our Royal Consideration, Your Loyalty, Integrity, and ability, Have, assigned, Constituted, and appointed, AND WE, do hereby assign, Constitute, and appoint, you, the said WILLIAM HEY, our Chief Justice of, and in our Province of Quebec in America ; To Enquire by the Oaths of honest and lawful men of the province aforesaid, and by other lawful ways, Methods, and means, by which you can or may the better Know, as well within liberties as without, of whatsoever Treasons, misprisions of Treason, Insurrections, Rebellions, Murders, Felonies, Homicides, Killings, Burglaries, Rapes of Women, Unlawful Congregations & Assemblies, words spoken, Misprisions, Confederacies, False Allegations, Trespasses, Riots, Routs, Escapes, Contempts, Falsities, Negligencies, Concealments, Maintenances, Oppressions, Champorties, Deceits, and other Misdoings, Offences, and Injuries whatsoever, as also of the accessaries thereto within the province aforesaid, as well within liberties as without, by whomsoever and howsoever had, done, perpetrated, or Committed, or which hereafter may happen to be done, perpetrated, or Committed, and by whom, to whom, when, where, and how, and of all other articles and Circumstances, the premises, or any of them, any wise Concerning : And the said treasons and other the premises to hear and determine, according to the law and Custom of that part of our Kingdom of Great Britain Called England, and of our said province of Quebec, hereafter to be made. THEREFORE WE Command that, at such certain days and places as you shall appoint, You make diligent inquiry of the premises ; and all and singular the premises you hear and determine ; and the same do and fulfil in form aforesaid, doing therein that which to Justice doth belong or appertain, according to the Law and Custom of that part of our Kingdom of Great Britain Called England, and of our said province of Quebec hereafter to be

[1] Canadian Archives, Register of Commissions, from Department of Secretary of State.

The mandate to the Governor to appoint Wm. Hey as Chief Justice is dated Feb. 3rd and is as follows :—

" The King's Mandate to the Governor or Commander in Chief of the Province of Quebec, requiring Him to appoint William Hey, Esquire, Chief Justice of the s^{d} Province.

George R.

Trusty and well beloved, We greet you well, Whereas We have taken into our royal consideration the loyalty, integrity, and ability of our trusty and well beloved William Hey, Esquire, We have thought fit, hereby, to authorize and require you forthwith to cause letters patent to be passed under the seal of our province of Quebec in America, constituting and appointing him the said William Hey, our Chief Justice of, and in our said province ; to have, hold exercise and enjoy the said office unto him the said William Hey, for and during our pleasure, and his residence within our said province, together with all and singular the rights, profits, privileges and emoluments unto the said place belonging in the most full and ample manner with full power and authority to hold the supreme courts of judiciture, at such places, and at such times as the same may and ought to be held within our said province. And for so doing, this shall be your warrant. And so we bid you farewell.

Given at our Court at St. James' the 3^{d} day of February 1766 in the sixth year of our Reign.

By His Majesty's command
(signed) H. S. CONWAY

To our trusty and well beloved James Murray, Esquire, our Captain General and Governor in Chief in and over our Province of Quebec in America ; and in his absence to the Commander in Chief of our said Province for the time being."

From copy in the Public Record Office. See also note p. 178.

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made: Saving to us our Amerciaments and other things thereby to us belonging; for we will Command all and every our Sheriffs or provost Marshal's of our province aforesaid; That at such certain days, and places as you our Chief Justice shall make known to him, them, or any of them, they cause to come then and there before you such and so many honest and lawful men of our said province as well within liberties as without, by whom the Truth of the matter may be the better Known and inquired of.

Power to deliver goals of prisoners therein confined.

AND FURTHER, KNOW YE That we have assigned, Constituted, and appointed, and by these presents, do assign, Constitute and appoint you, the said WILLIAM HEY, our Goal of our Province aforesaid, of the prisoners therein hereafter to be to deliver. AND, therefore we Command you that, at such Certain days & places as you shall appoint, you come to our Court-House of our said Province the Goal in our said province of the prisoners hereafter therein to be to deliver, doing therein what to justice doth, or may, belong or appertain, according to the Law & Custom of that part of our Kingdom of Great Britain called England, and of our said province of Quebec hereafter to be made; saving to us our amerciaments and other things thereby to us belonging: For we will Command all and every our Sheriffs and provost Marshals of our said Province of Quebec that, at such Certain days and places as you our Said Chief Justice shall make known to him, them, or any of them, they Cause to Come then and there before you our said Chief Justice all the prisoners of the same Goal and their attachments.

Power to hear and determine all civil suits and actions, whether real, personal, or mixt, either between the King and a subject, or between subject and subject.

AND FURTHER KNOW YE That we have assigned, Constituted and appointed, and by these presents, do assign, Constitute and appoint, YOU, the said WILLIAM HEY, Our Chief Justice of Our Supreme Court of Judicature of our said province of Quebec, to inquire by the oaths of honest and lawful men of the province aforesaid, and by other lawful ways, methods and means, by which you can or may the better Know, as well within Liberties as without, of all civil pleas, actions, and suits, as well real and personal, as mixed, between us and any of our Subjects, or between party and party, by whomsoever had, brought, sued and Commenced, and of all other articles and circumstances the premises, or any of them, any wise Concerning: and the said pleas, actions, and suits, and every of them, to hear and determine in manner and form aforesaid, doing therein that which to Justice doth belong and appertain according to the Laws and Customs of that part of our Kingdom of Great Britain Called England, and the Laws, Ordinances, Rules, and Regulations of our said province of Quebec, hereafter in that behalf to be Ordained and made. THEREFORE WE Command you that, at such Certain Days and places, as you shall appoint, you make diligent inquiry of the premises; and all and singular the premises to hear and determine in manner and form aforesaid, doing therein that which to justice doth belong or appertain according to the Law and Custom of that part of our Kingdom of Great Britain Called England, and the Laws, Ordinances, Rules, and Regulations, of our said province of Quebec hereafter in that behalf to be made: FOR WE will Command all and every Our Sheriffs or provost Marshal of our province aforesaid that at such Days and places, as you our Said Chief Justice shall make Known to him, them, or any of them, they Cause to Come then and there before you, such and so many honest and lawful men of our said province, as well within liberties as without, by Whom the truth of the matter may be the better Known.

This Office to be held during the Kings pleasure and the Chief Justice's residence in the province.

TO HAVE, HOLD, AND EXERCISE the said Office of our chief Justice of and in our Said province of Quebec, for and during our Royal Will & pleasure and your Residence within our Said province; Together with all and Singular the Rights, profits, free priviledges, and Emoluments to the said Office belonging, in as full and ample manner as any other Chief Justice of any of our provinces of America HATH heretoforeheld and Enjoyed, or of right ought to

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have, hold, or Enjoy, the same, with full power and authority to hold the Supreme Courts of Judicature at such places and times as the same may or ought to be held within our said province.

In testimony whereof we have Caused these our Letters to be made patent and the Great seal of our said province of Quebec, to be hereunto Affixed, and to be entered on record in one of the Books of patents in our Registers Office of Inrollments of the said province Witness Our Trusty and well beloved. The Honble Guy Carleton Esquire, Our Lieutenant Governor and Commander in Chief in and over our said province of Quebec and the Territories thereon depending in America, at our Castle of Saint Lewis in our said City of Quebec, The Twenty-fifth Day of September in the Year of our Lord one Thousand seven hundred & Sixtysix, and in he Sixth Year of our Reign.

(L S) (Signed) GUY CARLETON

By the Lieutenant
Governor's Command.
(Signed) J GOLDFRAP
D. Sec^y

FIAT of the above Commission
Recorded in the Registers Office at Quebec the 25^th Day of September 1766

(Signed) J. GOLDFRAP,
D Reg^r

CARLETON TO SHELBURNE.[1]

Quebec 25^th Oct^r 1766.

My Lord!

I have the Honor of receiving your Lordship's Letter of the 9^th of August, with the Order of Council of the 8^th, which shall be punctually obeyed—[2]

* * * * * * * * * * *

The Subject of the inclosed Remonstrance is another Matter I have to mention. Your Lordship will see by my Letter to the Lords of Trade, by the Minutes of Council, and by the Minutes of the Committee, that nothing has been done that required a Council, my calling a few Councellors, was meerly from prudential Reasons, and for

[1] Canadian Archives, Q 3, p. 261. Though Governor Murray had been recalled to England, April 1st, 1766, he was not for some time deprived of his office as Governor of Quebec. Hence Gen. Guy Carleton who succeeded him was at first appointed as Lieutenant Governor, under the following Commission:—

"George the Third, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, and so forth; To our trusty and well-beloved Guy Carleton, Esquire, Greeting:

"We, reposing especial trust and confidence in your loyalty, integrity, and ability, do, by these presents, constitute and appoint you to be our Lieutenant Governour of our province of Quebec, in America; to have, hold, exercise, and enjoy the said place and office during our pleasure, with all rights, privileges, profits, perquisites, and advantages to the same belonging or appertaining.

"And further, in case of the death, or during the absence, of our captain general and governour in chief of our said province of Quebec, now, and for the time being, we do hereby authorize and require you to exercise and perform all and singular the powers and directions contained in our commission to our captain general and governour in chief, according to such instructions as he has already received from us, and such further orders and instructions as he, or you, shall hereafter receive from us.

"And we do hereby commend all and singular our officers, ministers, and loving subjects in our said province, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

"Given at our court at St. James's, the seventh of April 1766, in the sixth year of our reign.

"By his Majesty's command.

(Signed) H. S. Conway.

"Guy Carleton, Esquire, Lieutenant Governor of Quebec." A Collection of several Commissions and other Public Instruments, &c. by Francis Maseres. London: 1772. p. 122.

As this commission indicates, Carleton acted under the instructions given to Murray until his own appointment as Governor in Chief in 1768, when he received new instructions. In the meantime, however, several additions were made to the Council of Quebec, under the King's mandamus.

William Earl of Shelburne became Secretary of State for the Southern Department, July 13, 1766.

[2] A portion of this despatch, dealing with local troubles over trading privileges &c., is omitted.

GSL

private Information. As to the Members of Council, they themselves could have no Doubt who should have the Precedence, as the Case of M^r Stuart doth prove; Hitherto I have been silent on that Subject, not that I doubt of the King's Intentions, but as I understand these Gentlemen are searching an Excuse to resign their Seats, and make a Noise; I shall give them Time to cool and Reflect, till Matter occurs that may require a Council. The great Leader of the intended Opposition is M^r Mabane,[1] who followed the Army, as Surgeon's Mate into this Country; He hoping and believing this Government unsettled, is determined to make some considerable Agitation; I trust he will not succeed: Captain Cuthbert threatens me much with his Friends, says he was forced into the Council by Governor Murray on his Departure, much against his will; but now he is in, he will shew the World who has Friends, and who shall be turned out. I laugh and make no Answer. M^r Walter Murray who has acted as a strolling Player in other Colonies, here as a Councellor; M^r Mounier, an honest quiet Trader, who knows very little of our Language or Manners, like most of the Canadians, will sign, without Examination whatever their Acquaintance urge them to, and Lieutenant Colonel Irving who professes he signed this, and the Order of Council mentioned above, because his Friends desired him—

All these little Workings I look on as the natural Consequence of the late Tempest, which after a few Months settled Calm must insensibly subside and die away. in General His Majesty's Subjects here seem rather to want Instruction, than Reproof. To know clearly the King's Will, and to see it steadily pursued here, will, or I am much mistaken, soon occasion a quiet and dutiful Obedience, in Spite of the Opposition of a few self Interested Individuals,

I am with much Respect and Esteem
Your Lordships
Most Obedient Humble Servant

GUY CARLETON

Right Honorable Earl of Shelburne
One of His Majesty's principal Secretaries of State.

REMONSTRANCE OF MEMBERS OF COUNCIL.

QUEBEC Octo^r 13^th 1766.

To the Hon^ble Brig^r Gen^l Guy Carleton Lie^t Gov^r of the Province of Quebec, & Brig^r Gen^l of His Majestys Forces &c.

We the underwritten Members of His Majesty's Council for the Province of Quebec, think it our indispensible duty to communicate to you our sense of the method lately adopted of calling together only a part of the Council: The bad consequences which may arise from Practice are manyfold; But as you are pleased to signifye to Us by Coll. Irving that it was accident, & not Intention, it is needless for us to enumerate them.

We would be wanting to ourselves, & Others in the same Circumstances if we did not remonstrate against an opinion lately insinuated, as if Mandamus's from Brittain suspended Appointments to the Council made by Gov^r Murray. We apprehend his Commission & Instructions, by which he was authorized to constitute a Council & to make choice of the Persons, to be to all Intents, & purposes, a Mandamus to each of Us, provided His Majesty did not disapprove of Us, when reported to Him by the Governour: The many Difficulties which for Two Years we had to encounter in a new Establishment for a Province under very peculiar circumstances, perhaps entitle us to some Reguard: At any Rate tho' His Majesty may have an undoubted Right to encrease the number of his Council by granting Mandamus's to whom He pleases, it is to be presumed that by so doing there is no Intention to deprive Us either of our Right

[1] Adam Mabane was a member of the first Council appointed by Governor Murray in 1764; the other members were Chief Justice Gregory, P. Æmilius Irving, H. T. Cramahé, Walter Murray, Samuel Holland, Thos. Dunn and François Mounier.

to Precedence, or to a Seat in Council: A late event on the Departure of Gov^{r} Murray is a proof of the contrary.

If by the Constitution or Custom of the Colonys the number of the Council is restricted, Mandamus's are in that Case to be regarded only as an Order for the Admission of the Persons named therein, Provided there is a Vacancy.

If the Deference which we feel for every Manifestation of the Will of our Sovereign has prevented us from objecting to any person possessed of a Mandamus from being sworn into the Council, We apprehend that if the Council is at present, or hereafter may be restricted, The Councillor last admitted is to be considered as the Supernumerary.

We have the hon^{r} to be wth the greatest respect
S^{r} y^{r} most obed^{t} h^{ble} Serv^{ts}.

(Signed)

P. ÆMI^{s} IRVING
WA^{r} MURRAY
ADAM MABANE
FR^{s} MOUNIER
JAMES CUTHBERT.

Endorsed: Copy ⅌ Remonstrance of L^{t} Col^{l} Irving and other Members of His Majesty's Council at Quebec 13th Oct^{r} 1766.

In Lieu^{t} Gov^{r} Carleton's, of the 25th Oct^{r} 1766.

GOVERNOR CARLETON'S REPLY.

To Lieut^{t} Colonel Irving Major to the 15th Regiment. M^{r} Walter Murray, M^{r} Adam Mabane Surgeon, M^{r} Francis Mounier Merchant, Captain James Cuthbert– –

GENTLEMEN

As Lieutenant Colonel Irving has signified to you, that the Part of my Conduct, you think worthy your Reprehension, happened by Accident, let him explain to you his Reasons for so doing, He had no authority from me– –

But that there may be no further Doubt, I hereby make known to you, that I both have and will, on all Matters which do not require the Consent of Council, call together such Councellors as I shall think best qualified to give me Information: and further, that I will ask the Advice and Opinion of such Persons, tho' not of the Council as I shall find Men of good Sense, Truth, Candor, and Impartial Justice; persons who prefer their Duty to the King and the Tranquility of His Subjects to unjustifiable Attachments, Party Zeal, and to all selfish mercenary views: After I have obtained such Advice, I will still direct as to me shall seem best for His Majesty's Service, and the Good of His Province committed to my Care– –

I further make Known to you, and for the first time I give an Opinion, that for the present His Majesty's Council consists of twelve Members; those named and appointed immediately by the King[1] have the Preference, next follow those appointed by Governor Murray till the Seats are all full:

[1] In the Instructions given to Governor Murray, in addition to certain ex-officio members, such as the Chief Justice and the Surveyor General of Customs, he was authorized to select and appoint eight other members to constitute the Council of the Province. In the Instructions given to Governor Carleton, however, the members of the Council were specifically named as appointed by the King. See p. 211. The following is a list of the members of Council at the end of 1766 with the dates of their admission :—

1764.
"August 13th Paul Æmi^{s} Irving— Again swore in 24th Sept^{r} 1766 by mandamus
Hector Theophilus Cramaché dated 21st June 1766, swore in again 24th September 1766.
Samuel Hollandt.
Walter Murray, Again swore in 24th Sept^{r} 1766.
Adam Mabane— Ditto Ditto
Thomas Dunn— ditto ditto
Francis Mounier

You will be pleased to recollect, Gentlemen, that Mr Stewart, tho' sworn into Council after Mr Mounier, has by Virtue of the King's immediate Appointment constantly taken Place and Precedence of you all.

I must also remind you, that His Majesty's Service requires Tranquility and Peace in His Province of Quebec, and that it is the indispensable Duty of every good Subject, and of every honest Man, to promote so desirable an End.

(Signed). GUY CARLETON.

Endorsed: Answer to Lieut Col. Irving, Mr Walter Murray &c, Octr 1766.

CARLETON TO GAGE.[1]

Copy of a Letter from Major General Carleton to His Excellency General Gage, dated at Quebec 15th Febry 1767—

Sir

The Forts of Crown Point, Ticonderoga, and Fort George are in a very declining Condition, of which, I believe, Your Excellency is well informed; should you approve of keeping up these Posts, it will be best to repair them as soon as possible. As you have been pleased to desire my Opinion of this Measure, I must freely say, that the more I consider the State of Affairs on this Continent,[2] more and stronger Reasons present themselves, and I am the more convinced, it is not only expedient, but indispensably necessary for the Interest of Great Britain, and His Majesty's Service, not only to keep these in good Repair, but to erect a proper Place of Arms near the Town of New York, and a Citadel in or near the Town of Quebec. These with temporary Works thrown up occasionally at the other Places of Landing and Embarking, will secure the Communication with the Mother Country, and will link these two Provinces so strongly together, as will add great security to both; they will facilitate the Transport of ten or fifteen thousand Men in the Beginning of a War, from the one to the other, as the Circumstances require—

The natural and political Situation of the Provinces of Quebec and New York is such, as must for ever give them great Influence and Weight in the American System, therefore no Pains, Address, nor Expence too great to root out Faction or Party; to establish Tranquility, and a firm Attachment to His Majesty's Government, at the same time it is equally essential to establish that security and Strength as can properly curb and overawe, should such ever arise, who by the Ties of loyal Subjects and honest Men, are not thoroughly bound to their Duty.

This Communication so established, will give Security to the King's Magazines, till then precarious, and doubtfull who may avail themselves of them; will separate the Northern from the Southern Colonies, will afford an easy and advantagious Opportunity of transporting His Forces into any part of this Continent, and may prevent the greatest of all Inconveniencies, Delay and Loss of Time in the Beginning of a War.

Octr 10th	James Goldfrap, by mandamus, dated 20th July 1764 again swore in 24th September 1766.
ditto 31st	Benjamin Price
1765.	
June 20th	Charles Stewart, S. G. by mandamus
1766.	
June 14th	James Cuthbert.
ditto 30th	Thomas Mills, R. G.—by mandamus.
Sepr 25th	William Hey C. J— * by mandamus

The above is a true List of the members of His Majesty's Council of the Province of Quebec with the Times of their being sworn in, taken from the Council Book Kept in my office.

* in the room of William Gregory, Esqr late Chief Justice, and struck out of the Council"

(Signed) Ja: Potts, D.C.C.

Endorsed—Copy of the List of Council of Quebec 1766

[1] Canadian Archives, Q 4, p. 100.

[2] Referring to the troubles which were developing in the American colonies.

CSL

The Walls of this Place have not been repaired since the Siege, which left many Holes in the Masonry, that will precipitate their Ruin if not soon repaired; I have not one Engineer in the Province to form an Estimate of the Repairs, or make any Alteration that may be immediately necessary.

(a true Copy)

H. T. CRAMAHÉ

Endorsed: Copy of a Letter from General Carleton to His Excellency General Gage, dated at Quebec, 25th Feby, 1767. In Lieut.-Governor Cramahé's Letter of the 9th Novr

SHELBURNE TO CARLETON.[1]

WHITEHALL 20th June 1767.

LIEUT. GOVERNOR CARLETON.

SIR,

Since my Letter of 26th May,[2] I have received your's of 28th March,[3] which I have had the Honor to lay before the King, & I have the Pleasure of confirming to you, His Majesty's gracious Approbation of your Conduct. The Rectitude of those Principles by which you have governed yourself, & your firm tho' dispassionate manner of Proceeding, if persevered in, cannot fail of giving due weight to your Administration, of allaying any remains of Faction which may not yet have subsided, & of putting an End to those Impediments which too often arise from private Views & personal Jealousies.

* * * * * * * *

As the right Administration of Government in Quebec is a matter of the greatest Importance to that Province, the Improvement of its Civil Constitution is under the most serious & deliberate consideration of His Majesty's Servants & principally of His Majesty's Privy Council. Every light which can be procured on this Subject, will be material as well as every Information which can tend to elucidate how far it is practicable and Expedient to blend the English with the french Laws in order to form such a System as shall at once be Equitable & convenient, both for His Majesty's Old and New Subjects, in order to the whole being confirmed & finally established by Authority of Parliament.

* * * * * * * *

I am &ca

SHELBURNE

Endorsed:—(N° 4) Drat to Lieut-Govr Carleton 20th June 1767.

CARLETON TO SHELBURNE.[4]

QUEBEC 25th Novr 1767.

My Lord!

As Your Lordship informs me, that the Improvement of the Civil Constitution of Quebec is under the most serious and deliberate Consideration of His Majesty's Servants, and that any Light, which can be procured on that Subject, will be material, I shall endeavour to represent the true Situation of the Province, and add such Observations, as have occurred to me, with that Candor, which, I think, the King's Service requires, in Compliance with what your Lordship seems to desire, and least His Majesty's Servants, Employed in a Work of so great Importance, tho' of profound Knowledge and Judgment, for Want of having truly represented, to them, Objects at so great a Distance, and in themselves so different from what is to be found in any other of His Dominions, I say, least without a true Representation of Things, the Kings Service should not profit, as much as possible, of the great Abilities of His Servants—

[1] Canadian Archives, Q 4, p. 130. The omitted portions of this despatch refer to the Walker assault case and disputes with reference to the Indian Trade.
[2] Given in Q 4, p. 106.
[3] With reference to the Indian Trade; given in Q 4, p. 111.
[4] Canadian Archives, Q 5-1, p. 260.

GSL

I take for granted, that the natural Rights of Men, the British Interests on this Continent, and the securing the Kings Dominions over this Province, must ever be the principal Points in View, in forming it's Civil Constitution, and Body of Laws; And that the last, is the Foundation of all, without which, other schemes can be little better than meer Castles in the Air; it will naturally follow, I should first shew, How far this Foundation is, or is not firmly laid—

The Town of Quebec is the only Post, in this Province, that has the least Claim to be called a fortified Place; for the flimsy Wall about Montreal, was it not falling to Ruins, could only turn Musketry; it will be sufficiently accurate for the present Purpose, if this Town be considered as a good Camp for ten or twelve Battalions, whose Front is fortified by a Bastioned Rampart, faced with Masonry; built, for the most Part, upon a Rock; without Ditch or outwork; it's Profile, slight for a Fortress, is substantial for an Encampment, it's Parapet in very bad Order. The Flanks and Rear of this Encampment, in one thousand seven hundred and fifty nine, were closed partly by a thin Wall, the rest by great Stakes, now carried away, or rotten; these ran along the Heigths and Precipices at a little Distance from the River St. Lawrence, the Bason, and River St. Charles, so as to leave a Passage between this Line and these Waters. With a Number of Troops sufficient for this Post, those Flanks and Rear might in a little Time be secured, and guarded so, as to reduce an Enemy to form his Attack in Front, but in Proportion as the Numbers fall short, the Danger increases, of being surrounded and Stormed with little ceremony; especially when this Line is open in many Places, as at present.

The King's Forces in this Province, supposing them compleat to the Allowance, and all in perfect Health, Rank and File, would amount to sixteen hundred and twenty seven Men, The King's old subjects in this Province, supposing them all willing, might furnish about five hundred Men, able to carry Arms, exclusive of his Troops; that is supposing all the King's Troops and old Subjects collected in Quebec; with two Months hard Labour, they might put the Works in a tolerable State of Repair, and would amount to about one third of the Forces necessary for it's Defence.

The new Subjects could send into the Field, about eighteen thousand Men, well able to carry Arms; of which Number, above one half have already served, with as much Valor, with more Zeal, and more military Knowledge for America, than the regular Troops of France, that were joined with them.

As the common People are greatly to be influenced by their Seigneurs, I annex a Return of the Noblesse of Canada,[1] shewing with tolerable Exactness, their Age, Rank, and present Place of Abode, together with such Natives of France, as served in the Colony Troops so early in Life, as to give them a Knowledge of the Country, an Acquaintance and Influence over the People, equal to Natives of the same Rank; from whence it appears, that there are in France, and in the French Service, about one hundred Officers, all ready to be sent back, in Case of a War, to a Country they are intimately acquainted with, and with the Assistance of some Troops, to stir up a People accustomed to pay them implicit Obedience. It further shews, there remain in Canada, not many more than seventy of those, who ever had been in the French Service; not one of them in the King's Service, nor one who, from any Motive whatever, is induced to support His Government and Dominion; Gentlemen, who have lost their Employments, at least, by becoming His Subjects, and as they are not Bound by any Offices of Trust or Profit, we should only deceive ourselves by supposing, they would be active in the Defence of a People, that has deprived them of their Honors, Privileges, Profits and Laws, and in their Stead, have introduced much Expence, Chicannery, and Confusion, with a Deluge of new Laws unknown and unpublished. Therefore all Circumstances considered, while Matters continue in their present State, the most we may Hope for from the Gentlemen, who remain in the Province, is a passive Neutrality on all Occasions, with a respectful Submission to Government, and Deference for the King's Commission in whatever Hand it may be lodged; this they almost to a Man have persevered in, since my Arrival, notwithstanding much Pains have been taken, to

[1] Canadian Archives, Q 5-1, p. 269. This is printed in full in the Report on Canadian Archives for 1888, p. 44.

CSL

engage them in Parties, by a few, whose Duty, and whose Office should have taught them better. This Disposition the French Minister seems to have foreseen, as appears by Orders calculated to draw them from Canada into France, well knowing that such as remained, were bound by Duty and Honor to do nothing against their Allegiance to the King, under whose Government they live, whereas those, who go to France, are to all Intents and Purposes Officers in the French Service, and liable to be sent on any Service.

For these Reasons, I imagine, an Edict was published in 1762. Declaring, that notwithstanding the low State of the King's Finances, the Salary of the Captains of the Colony Troops of Canada should be raised from four hundred and fifty Livres, the Establishment at which their Pay was fixed at first, to six hundred Livres a Year, to be paid quarterly, upon the Footing of Officers in full Pay, by the Treasurer of the Colonies, at the Quarters assigned them by His Majesty in Touraine, and that such of them, as did not repair thither, should be struck off, the King's Intentions being, that the said Officers should remain in that Province, untill further Orders, and not depart from thence without a written Leave from the Secretary of State for the Marine Department.

A few of these Officers have been sent to the other Colonies, but the greater Part still remain in Touraine and the Arrears due to those, who have remained any Time in this Country, are punctually discharged, upon their Emigration from hence, and Obedience to the abovementioned Injunction.

By the Secretary of State's Letter, a certain Quanty of Wine, Duty free, is admitted to enter the Towns, where these Canadian Officers Quarter, for their use, according to their several Ranks.

Having arrayed the Strength of His Majesty's old and new Subjects, and shewn the great Superiority of the Latter, it may not be amiss to observe, that there is not the least Probability, this present Superiority should ever diminish, on the Contrary 'tis more than probable it will increase and strengthen daily: The Europeans, who migrate never will prefer the long unhospitable Winters of Canada, to the more chearful Climates, and more fruitful Soil of His Majesty's Southern Provinces; The few old Subjects, at present in this Province, have been mostly left here by Accident, and are either disbanded Officers, Soldiers, or Followers of the Army, who, not knowing how to dispose of themselves elsewhere, settled where they were left at the Reduction; or else they are Adventurers in Trade, or such as could not remain at Home, who set out to mend their Fortunes, at the opening of this new Channel for Commerce, but Experience has taught almost all of them, that this Trade requires a Strict Frugality, they are Strangers to, or to which they will not submit; so that some, from more advantagious Views elsewhere, others from Necessity, have already left this Province, and I greatly fear many more, for the same Reasons, will follow their Example in a few Years; But while this severe Climate, and the Poverty of the Country discourages all but the Natives, it's Healthfulness is such, that these multiply daily, so that, barring a Catastrophe shocking to think of, this Country must, to the end of Time, be peopled by the Canadian Race, who already have taken such firm Root, and got to so great a Heigth, that any new Stock transplanted will be totally hid, and imperceptible amongst them, except in the Towns of Quebec and Montreal.

'Twas partly from these Considerations, as well as from those mentioned in my Letter of the 15th February[1] last to the Commander in Chief, a Copy of which I inclosed to Your Lordship, that I recommended the building of a Citadel within the Town of Quebec, that the Troops might have a Post capable of being defended by their Numbers, till Succour could be sent them from Home, or from the neighbouring Colonies; for should a French War surprise the Province in it's present Situation, the Canadian Officers sent from France with Troops, might assemble such a Body of People, As would render the King's Dominion over the Province very precarious, while it depends on a few Troops, in an extensive Post, open in many Places. A proper Citadel once erected, the Situation of Things will be greatly changed, the King's Enemies, who would attempt to disturb this Province, must hazard a larger Stake, and the Chances against them

[1] See Carleton to Gage; p. 195.

will be very considerably augmented; Greater Preparations must be made, which must give an Alarm at Home, a greater Number of Troops must be sent, with a Train of Artillery for a Siege, and a large Quantity of Ammunition, and Provisions, with a Fleet of Transports, and Ships of War to protect and assist in the different Operations, whose Success may be uncertain, but which, at all Events, must give Time for a Superior Squadron to follow, and catch them in the River, as well as to the Troops and Militia from the neighbouring Provinces to pour into this; a Work of this Nature is not only necessary as Matters now stand, but supposing the Canadians could be interested to take a Part in the Defence of the King's Government, a Change not impossible to bring about, yet Time must bring forth Events that will render it essentially necessary for the British Interests on this Continent, to secure this Port of Communication with the Mother Country; as might easily be proved, were they not too remote for the present Purpose.

Inclosed is the Plan for such a Citadel, as I think, would answer all the present and future Purposes of Great Britain, tho', if I am not mistaken, Captain Gordon the Engineer has already transmitted Home one more detailed, with a Calculation of the Expence necessary for it's Construction.

I am with much Respect and Esteem
Your Lordship's
Most Obedient Humble Servant

GUY CARLETON

The Earl of Shelburne One of
His Majesty's principal Secretaries

RESOLUTION OF PRIVY COUNCIL AS TO INFORMATION REQUIRED CONCERNING THE PROVINCE OF QUEBEC.[1]

AT THE COURT OF ST. JAMES'S

the 28th, Day of August, 1767.

Present

THE KING'S MOST EXCELLENT MAJESTY.

Lord Chancellor	Viscount Townshend
Lord President	Mr Secry Conway
Earl of Shelburne.	Sir Edwd Hawke.

Whereas there was this day read at the Board a Report from the Rt. Honble, the Lords of the committee of Council for Plantation Affairs dated this day in the words following vizt.

"The Lords of the Committee having this day taken into their consideration a Draught of Instructions prepared by the Board of Trade for establishing courts of Judicature in the Province of Quebec and transmitted to this Committee on the 24th June 1766—[2] Their Lordships upon full consideration of the sd Draught of Instructions, are of Opinion that the same is so general, and so unsupported by any specific or particular proof of any Grievances in Judicature, to which any particular and effectual Reform or Remedy can be applied (except what has already been given) and especially as since

[1] Canadian Archives, Q 4, p. 327.

[2] The letter from the Board of Trade transmitting this draught is given in Can. Archives, Q 3, p. 171, but the instructions do not accompany it. According to the letter the instructions require the Governor to establish courts of justice "conformable to the Plan proposed by us in our Report to your Lordships of the 2nd September 1765, with such Variations as are suggested in the Report of the Attorney and Solicitor General, annexed to your Lordships Order of the 13th of last month." The Report of Sept. 2nd is also missing see note, p. 171 For the Report of the Attorney and Sclicitor General, see p. 174.

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

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the return of Genl. Murray, no Gov^r or locum tenens, or any of your Maty's law officers, have represented in their correspondence Gravamens arising to the subjects in the Province from any defects in the state of Judicature as it at present exists (which had any material ones existed it was their Duty to do, and they certainly would have done) except a Paragraph in a Letter from Col. Irving, dated 20th Augt. 1766—[1] Vizt, "all that to me seems wanting at present is a permanency to the inferior Courts and a more ample authority for the Judges of it to adhere to the Coutumes de Pais a defect if its subsists, so concisely & unexplicitly stated is not to be understood so as to found a Judgement of the Remedy to be applied, that the Lords of the committee cannot without further Information, advise your Majesty to approve thereof, and order the same to be carried into execution.—But as their Lordships are truly sensible of your Majesty's Royal constitutional and paternal Regard for all and every part of Your Majestys Dominions and Your Subjects inhabiting therein, the Committee do after the most serious & mature deliberation on the subject referred by your Majesty to them for their advice thereupon, submit as their humble advice to your Maty. That in order to amend any defects in the present State of Judicature in the Province of Quebec (if any such subsists) it is proper and absolutely necessary after a competent experience now had of the State of the Province so particularly composed of English and Canadian Subjects, and of the Judicature and administration of Justice now subsisting, to obtain from Your Majesty's Servants there, on whose information alone your Majesty's Servants (there, on whose information alone your Majesty's Servants*) in this Kingdom can rely with any reasonable degree of confidence, precise, solemn & authentic Information of the Defects if any that are now existing, together with the Remedies, Reforms, Additions, or Alterations which they would propose for your Majesty's Royal consideration, that so your Majesty's Servants here may be enabled to advise your Majesty on the best Light that can be obtained, it being, as the Lords of the Committee conceive, unwise and Dangerous to the Province to frame or reform Laws in the Dark, and upon speculation only, and for the purpose of obtaining such necessary Information on so serious and important a subject—Their Lordships humbly submit to your Majesty, to order your now Gov^r of the said Province, or his locum tenens, with the advice and assistance of the Council, the Chief Justice and Attorney Genl. of your Majesty's Province, and taking such other assistance as shall be thought necessary to report to your Ma'ty.

1st "Whether any and what defects are now subsisting in the present state of Judicature."

2^d "Whether the Canadians in particular are, or think themselves aggrieved according to the present administration of Justice. Wherein and in what respects together with their Opinions of any alterations, additions or amendments that they can propose for the General Benefit of the said Province, and that such Alterations or Amendments for the clearer apprehension thereof be transmitted in form of Ordinance, but not passed as such, and that such Report be returned signed by your Majesty's Gov^r or locum tenens the said Chief Justice & Attorney Genl. But if they should not concur, the Person or Persons differing in opinion be required to report the difference of his opinion, together with his reasons for such difference of Opinion fully and at large. And that a fit and proper Person be sent with such Instructions and to bring back such Report for the most convenient dispatch, and who being properly recommended to the said Officers may be enabled to explain any difficulties, if any such should arise from the said Report.

His Majesty this day took the said Report into Consideration and was pleased with the advice of His privy Council to approve thereof and to order, that the Right honble the Earl of Shelburne, one of His Majesty's principal Secretaries of State do give the necessary directions for carrying into execution what is proposed therein to be done.

*The words in parenthesis seem to be a repetition.

[1] See p. 187.

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

GL

SHELBURNE TO CARLETON.[1]

WHITEHALL Dec. 17. 1767.

GOVERNOR OF QUEBEC.

Sir,

His Majesty having been pleased to order that I should give the necessary directions for carrying into execution the intentions of an order of His Majesty's Council (which I have already transmitted to you) dated the 28th day of August 1767,[2] relative to certain supposed defects in the present state of Judicature of the province of Quebec; I am therefore to signify to you His Majesty's pleasure, that you, taking to your Assistance the Chief Justice & Attorney Genl. of Quebec, together with Maurice Morgan[3] Esqr the Bearer of this Letter, & advising with such other intelligent & well-instructed persons as you shall judge proper, do make full & accurate enquiry into this matter, so that having obtained complete & authentic information of the present State of Judicature in the Province of Quebec, you may be enabled to give your opinion of any Reform or Amendment that may be thought necessary in the Form of Ordinances to be transmitted here, for the consideration of His Majesty's Privy Council, from which Ordinances, when completed, you are, with the advice and assistance of the Council of Quebec, to form a report[4] for His Majesty's Consideration; and whereas I am directed to nominate a fit & proper person to carry out the necessary Orders for this purpose, who may confer with you and the other persons named, with full confidence upon the general subject of these orders, to the end that, acquainting himself with the reasons & motives upon which any reform shall be proposed, he may upon his return explain to His Majesty's Ministers & Council any difficulties which may arise thereupon; I have accordingly recommended to His Majesty Maurice Morgan Esqr as a person every way qualified for this business; and I request you will favour him with your good Offices, Protection, & Assistance in the execution of his Trust, that being furnished with every light that your experience may have acquired, he may, upon his return with your Report, be able to fulfill, as completely as possible, the intention of his appointment.

I am &c.

SHELBURNE

CARLETON TO SHELBURNE.[5]

QUEBEC 24th Decr 1767.

MY LORD!

To conceive the true State of the People of this Province, so far as the Laws and Administration of Justice are concerned, and the Sensations, they must feel, in their present Situation, 'tis necessary to recollect, they are not a Migratiom of Britons, who brought with them the Laws of England, but a Populous and long established Colony, reduced by the King's Arms, to submit to His Dominion, on *certain Conditions*: That their Laws and Customs were widely Different from those of England, but founded on natural Justice and Equity, as well as these; That their Honors,

[1] Canadian Archives, Q 4, p. 325.

[2] See p. 199.

[3] The nature of Morgan's mission may be gathered from the paper which precedes. On the date of this letter Shelburne wrote to Morgan, acquainting him with the nature of the steps taken to obtain an adequate report on the administration of law in the Province of Quebec. He refers to the necessity "to send over to Quebec for more convenient dispatch a fit & proper person to carry our instructions for this purpose, and to bring back such Report, and who being properly recommended to the Officers may be enabled to explain such difficulties if such should arise from the said report;" He is informed that he has been selected for this mission and that he is to set out immediately for Quebec, and while there, "to acquaint yourself in the fullest manner possible, of everything relative to the general State and condition of Canada." Morgan arrived in Canada Aug. 22nd, 1767; was courteously received, and reported to Shelburne from time to time.

[4] For the draught of this report prepared by the Attorney General, see p. 228.

[5] Canadian Archives, Q 5-1, p. 316.

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Property, and Profits, as well as the King's Dues, in a great Measure Depended upon them, That, on the Mutation of Lands by sale, some special Cases excepted, they established Fines to the King, in Lieu of Quit Rents, and to the Seigneur, Fines and Dues, as his Chief Profits, Obliging him to grant his Lands at very low Rents—

This System of Laws established Subordination, from the first to the lowest, which preserved the internal Harmony, they enjoyed untill our Arrival, and secured Obedience to the Supreme Seat of Government from a very distant Province. All this Arrangement, in one Hour, We overturned, by the Ordinance of the Seventeenth of September One Thousand seven hundred and sixty four, and Laws, ill adapted to the Genius of the Canadians, to the Situation of the Province, and to the Interests of Great Britain, unknown, and unpublished were introduced in their Stead; A Sort of Severity, if I remember right, never before praticed by any Conqueror, even where the People, without Capitulation, submitted to His Will and Discretion.

How far this Change of Laws, which Deprives such Numbers of their Honors, Privileges, Profits, and Property, is conformable to the Capitulation of Montreal, and Treaty of Paris; How far this Ordinance, which affects the Life, Limb, Liberty, and Property of the Subject, is within the Limits of the Power, His Majesty has been pleased to Grant to the Governor and Council; How far this Ordinance, which in a Summary Way, Declares the Supreme Court of Judicature shall Judge all Cases Civil and Criminal by Laws unknown and unpublished to the People, is agreable to the natural Rights of Mankind, I humbly submit; This much is certain, that it cannot long remain in Force, without a General Confusion and Discontent—

To prevent some of the Misfortunes that must accrue, the inclosed Draft of an Ordinance[1] was prepared, to be laid before the Council, but when I reflected on the many Difficulties, that would still remain, I thought it more advisable, to leave those important Matters, as I found them, till His Majesty's Pleasure was known thereon—

To shew more fully the Extent of these Alterations, several Months ago I directed an Abridgment of the Laws of Canada, in Force on our Arrival, to be drawn up, and at the same Time, desired the Chief Justice and Attorney General to give me their Opinion upon the Mode at present in Practice; This I thought absolutely necessary, to shew the true state of these Matters, Holding it of Great Importance to the King's Service, that all cause of great or general Discontent should be removed and prevented.

A few Disputes have already appeared, where the English Law gives to one, what by the Canadian Law would belong to another; A Case of this Sort, not easy to determine, lies at present in Chancery; if decided for the Canadian, on the Principle, that Promulgation is necessary to give Force to Laws, the Uniformity of the Courts of Justice thereby will be still further destroyed, Chancery reversing the Judgments of the Supreme Court, as that Court reverses those of the Common Pleas; the People notwithstanding continue to regulate their Transactions by their Ancient Laws, tho' unknown and unauthorised in the Supreme Court, where most of these Transactions would be declared Invalid—

So short sighted are Men, that although these few Instances manifest the Difference of the old and new Law, and give some uneasiness to the Parties, yet I have met with only one Canadian, who sees this great Revolution in it's full Influence, but when Time brings forth Events, which shall make known to the Canadians, that their Modes of Inheritance are totally changed, and other Alterations, which affect the Property and Interest of every Family in the Province, the Consternation must become General: The present great and universal Complaint arises from the Delay, and Heavy Expence of Justice; formerly the King's Courts sat once a Week at Quebec, Montreal and Three Rivers; From these lay an Appeal to the Council, which also sat once a Week, where Fees of all Sorts were very low, and the Decisions immediate; At present the Courts sit three Times a Year at Quebec, and twice a Year at Montreal, and have introduced all the Chicanery of Westminster Hall into this impoverished Province, where few Fortunes can bear the Expence and Delay of a Law Suit; The People are thereby deprived of the Benefits of the King's Courts of Justice, which rather prove

[1] See "Draft" which follows this letter.

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Oppressive and ruinous than a Relief to the Injured; This, with the Weight of Fees in General, is the daily Complaint, not but a great deal might be said of the Inferior Administrators of Justice, very few of whom have received the Education requisite for their Office, and are not endowed with all the Moderation, Impartiality, and Disinterestedness that were to be wished—

The most advisable Method, in my Opinion, for removing the present, as well as for preventing future Evils, is to repeal that Ordinance,[1] as null and void in it's own nature, and for the present leave the Canadian Laws almost entire; such Alterations might be afterwards made in them, as Time and Occurrences rendered the same advisable, so as to reduce them to that System, His Majesty should think fit, without risking the Dangers of too much Precipitation; or else; such Alterations might be made in the old and those new Laws Judged necessary to be immediately introduced, and publish the whole as a Canadian Code, as was practised by Edward the First after the Conquest of Wales—

For a more expeditious and easy Administration of Justice, a Judge should reside at each of the three Towns of Quebec, Montreal, and Three Rivers, with a Canadian Assistant, to sit at least once a Month; It seems to me no less Essential, that none of the Principal Officers of Government and Justice, neither Governor, Judge, Secretary, Provost Martial, or Clerk of the Council should receive Fee, Reward or Present from the People, on Pain of the King's Displeasure, tho' an Equivalent should be allowed them by Way of Salary, and that the inferior Officers be restrained to the Fees authorised under the French Government, in order to remove the present Reproach, that our English Justice, and English Offices are calculated to drain the People of the little Substance they have left, as well as to serve as a Barrier to secure the King's Interests, at this Distance from the Throne, from the pestilential Dangers of Avarice and Corruption, for Ages to come.

What Salaries may be necessary to induce Gentlemen of the Law, of Integrity, and Abilities, with a knowledge of the French Language, to come into this Country, I cannot tell; such Characters however are more indispensably necessary in this, than in any other of the King's Provinces, for here, every Fault and Error of the Man becomes a national Reproach; But Men of the Stamp of our present Chief Justice and Attorney General[2] not being allways to be met with, if unexceptionable Characters, such as above described, cannot be procured, it will be better for the Province, to be satisfied with any Men of sound Sense and Probity, it can afford, who with good Intentions, and the Advice and Assistance of these two Gentlemen, may prove of more Service, than an Ignorant, greedy, or Factious set—

I could almost Venture to promise, that in a little Time, the Provincial Duties may pay all the Officers necessary for Government and the Administration of Justice, on the Footing I propose, of procuring Persons properly Qualified without Fees, together with all necessary extraordinary Expences, (I except however sine cure Salaries, and all public Works,) without giving the least Discontent; The Canadians in General, particularly the Gentlemen, greatly disapprove of the Verdict given last year against the Crown, on the Trial for the Duties, and both Canadian and English Merchants, the Colonists excepted, would have fixed the Rates in the Scheme I inclosed to your Lordship in my Letter[3] (N° 22) higher, than I thought Judicious for the first Essay; These Things I thought proper to mention at present, least the Œconomy, necessary at Home, might be an Objection to the Arrangements essential to the King's Service, and the Interests of Great Britain—

I am with much Respect and Esteem
Your Lordship's
Most Obedient
Humble Servant
GUY CARLETON

The Earl of Shelburne One of
His Majesty's Principal
Secretaries of State—

[1] The Ordinance of 17th Sept. 1764. See p. 149.

[2] Wm. Hey and Francis Maseres.

[3] The reference is to Carleton's letter to the Treasury, Dec. 10th, 1767, in which was enclosed a table of proposed duties, expenses, &c. See Canadian Archives Q 5-1, p. 300, for the letter, and pp. 306-315, for the tables.

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DRAUGHT OF AN ORDINANCE RELATING TO FRENCH LAND TENURES [1]

An Ordinance for Continuing and Confirming the Laws and Customs that prevailed in this Province in the Time of the French Government concerning the Tenure, Inheritance, and Alienation of Lands.

Whereas from the extensive Words used in the great Ordinance of this Province dated the 17th Day of Sepr in the Year of Our Lord 1764, intitled, *An Ordinance for regulating and establishing the Courts of Judicature, Justices of the Peace, Quarter Sessions, Bailiffs, and other Matters relative to the Distribution of Justice in this Province*, by which the two principal Courts of Judicature erected thereby in this Province are impowered and Directed, the one of them to hear and determine all Criminal and Civil Causes agreeable to the Laws of England and to the Ordinances of this Province, and the other to determine Matters of Property above the Value of ten Pounds agreable to Equity, having Regard nevertheless to the Laws of England, and an Appeal is allowed from this latter Court, in Cases wherein the Matter in Contest is of the Value of twenty Pounds, and upwards to the former Court which is strictly injoined to proceed according to the Laws of England and the Ordinances of this Province, as aforesaid, certain Doubts have arisen, and may arise, that in Consequence thereof, the Rules of Inheritance of Lands and Houses in this Province, and the Terms and Conditions of the Tenures thereof, and the Rights, Privileges, Profits and Emoluments thence arising either to the King's Most Excellent Majesty, or to divers of His said Majesty's Subjects that are owners of Lands in the said Province, were in the whole or in Part abolished, and the Laws and Customs of England relating to the said Points at once introduced in their Stead; which great and sudden Alteration of the Laws concerning these important Subjects would not only be in no wise useful to the said Province but by unsettling Mens antient and accustomed Rights and reasonable Expectations Founded thereon, would be attended with innumerable Hardships and Inconveniences to the Inhabitants thereof, and produce a general Confusion. In Order therefore to prevent these Evils, and to quiet the Minds of the Inhabitants with Respect to them, It is Ordained and Declared by the Lieutenant Governor of this Province, by and with the Advice and Consent of the Council of the same, that all the Laws and Customs that prevailed in this Province in the Time of the French Government at or immediately before the Time of the Conquest thereof by the Arms of Great Britain concerning the following Points; to Wit, Concerning the Tenures of Lands in this Province, both such as were held immediately of the Crown, and such as were held of Subjects, and the Terms and Conditions of such Tenures; and concerning the Rights, Privileges, and Preeminences annexed to any of the said Tenures, and the Burthens, Duties, and Obligations to which they were Subject, and Concerning the Inheritance and Succession to the said Lands upon the Death of any of the Proprietors thereof; and Concerning the Forfeiture, Confiscation, Reannexing or reuniting to the Demesne of the Lord, Escheat, Reversion, or other Devolution whatsoever of any of the said Lands, either to the King's Majesty or any of His Majesty's Subjects of whom they are held; and Concerning the Power of Devising, or Bequeathing, any of the said Lands by a Last Will and Testament; and Concerning the Power of Alienating the same by the Proprietors thereof in their Life Time; and Concerning the Power of Limiting, Mortgaging, Hypothecating, or any Way incumbering, or affecting, any Lands in the said Province; shall continue in full Force and Vigor untill they are changed in some of these Particulars by Ordinances made for that Purpose and expressly mentioning such Changes and setting forth in a full and distinct Manner the Laws introduced in the stead of those which shall be so changed or abolished, to the End that all the Inhabitants of this Province, Canadians as well as English, may fully understand and be made acquainted with the said new Laws that shall be so introduced, any Laws,

[1] Canadian Archives, Q 5-1, p. 323.

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SESSIONAL PAPER No. 18

Customs, or Usages of England, or any Ordinances of this Province, to the Contrary hereof in any Wise Notwithstanding—

Also the said French Laws and Customs hereby Continued and Confirmed shall be deemed and taken to have continued without Interruption from the Time of the Conquest of this Country by the British Arms to the present Time; any former Ordinance, or Ordinances, of this Province to the contrary thereof in any Wise Notwithstanding.

And further this Ordinance shall extend not only to all Lands in this Province held immediately of the Crown by Grants made by the French King before the Conquest of this Country, and to all Lands held under these immediate of the Crown, who are commonly called *Seigneurs*, by Grants made by the said Seigneurs to inferior Tenants or Vassals, before the said Conquest, but likewise to such Lands as have been granted by the said Seigneurs to the said inferior Tenants since the said Conquest, and likewise to all such Lands as shall be granted hereafter by the said Seigneurs to the said inferior Tenants or Vassals; all which said Grants from the said Seigneurs to the said inferior Tenants, or Vassals, both these that shall hereafter be made, and those that have been made already, shall be subject to the same Rules, Restrictions, and Conditions, as were lawfully in Force Concerning them in the Time of the French Government at, or immediately before, the Time, of the said Conquest of this Province by the British Arms. But this Ordinance shall not extend to, or any Way affect, any new Grants of Land in this Province made by the King's Majesty since the said Conquest, or hereafter to be made by his said Majesty; but the Laws and Rules relating to such Royal Grants shall be the same as if this Ordinance had not been made.

Given by the Hon^ble^ Guy Carleton Lt. Governor and Commander in Chief of the Province of Quebec, Brig^r^ Genl. of His Majesty's Forces &c &c in Council at the Castle of St. Louis in the City of Quebec on the Day of in the Year of His Majesty's Reign and in the Year of our Lord 176

CARLETON TO SHELBURNE.[1]

QUEBEC 20^th^ Jan^ry^ 1768

My Lord!

In my Letter[2] (No. 20) I have given the Military state of this Province, with a scheme for strengthening it by a Citadel; I shall now add, that, was this already constructed, and I could suppose it impossible for any foreign Enemy to shake the King's Dominion over the Province, still I shall think the Interests of Great Britain but half advanced, unless the Canadians are inspired with a cordial Attachment, and zeal for the King's Government; How far they are removed from that desirable Disposition, may easily be discovered, if brought to the Test, and examined by the general Cause of the Attachments of Men, Self-Interest; if it shall not be found more their Interest to remain as at present, than to return under the Dominion of their former Sovereign, they certainly have not all those Motives, which induce Men of Honor to disregard the general Rule; there remain, 'tis true, an Oath of Allegiance, which may keep some Quiet in Case of a French Expedition, and the Punishments due to Traitors, which will be regarded, as long as Government has Force sufficient to inflict them; it therefore seems to me highly expedient, that, at least, those Causes of Complaint, which affect the Bulk of the People, and come home almost to every Man, should be removed; That they should be maintained in the quiet Possession of their Property, according to their own Customs, which Time immemorial, has been regarded by them and their Ancestors, as Law and Equity; and that the Approach to Justice and Government, for the Redress of Wrongs, be practicable and Convenient, in Place of being ruinous by Delay, and an Expence disproportioned to their Poverty; but this is neither in the Power of Justice or Government here to grant him, while the Supreme Court is obliged to Judge according to the Laws of England, and the different Offices can claim, as their Right, Fees calculated for much wealthier Provinces.

[1] Canadian Archives, Q 5-1, p. 370.

[2] Carleton to Shelburne, Nov. 25th, 1767. See p. 196.

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But, Beside these Points of Justice, as long as the Canadians are deprived of all Places of Trust and Profit, they never can forget, they no longer are under the Dominion of their natural Sovereign; tho' this immediately concerns but few, yet it affects the Minds of all, from a national Spirit, which ever interests itself at the general Exclusion of their Countrymen: three or four of their principal Gentlemen, with the Rank of Counsellors, was it little more than Honorary, tho' on many Occasions they might prove useful; a few Companies of Canadian Foot judiciously officered, with three or four trifling Employments, in the Civil Department, would make very considerable Alterations on the Minds of the People; It would divide the Canadians at least, and secure a Part, in Case of a French War, that would emulate the zeal of the King's National Troops; It would hold up Hopes to the Gentlemen, that their Children, without being bred up in France, or the French Service, might support their Families in the Service of the King their Master, and by their Employments preserve them from sinking into the lower Class of People, by the Division and Subdivision of Lands every Generation.

I have found in Canada, what I believe may be found everywhere, the People fond of the Laws and Form of Government they have been educated under, tho' scarcely a Man that Knows one sound Principle of Government, or Law; Three or four of the old Subjects, about a year ago, brought me the rough Draft of a Petition for a general Assembly, and hoped, I had no Objection to their having it signed by all the British, who wished to have one called; I told them, I had many Objections to great numbers signing a Request of any Kind, that it seldom conveyed the sincere Desire of the Subscribers, that it had an Appearance of an Intention to take away the Freedom of granting or refusing the Request; I had no Objection to Assemblies in General, yet such was the peculiar Situation of Canada, tho' I had turned that Matter often in my Thoughts, I could hit off no Plan that was not liable to many Inconveniencies, and some Danger; That perhaps they might be more fortunate, and I should think myself obliged to them, if they would shew me one, that could be of advantage to the Province, and the King's Service, assuring them, such a Plan wanted no Petitions to recommend it to me: about a Month after, they asked me, if I had considered of their Request, and I repeated my former Answer; since which I have often urged them, of my own Accord, to let me have their Scheme for an Assembly, and to inform me, who they thought should be the Electors, and who the Representatives, but to no Purpose; so that I imagined, they had laid aside all Thoughts of the Kind, till lately one John McCord, who wants neither Sense nor Honesty, and formerly kept a small Ale House in the poor Suburbs of a little Country Town in the North of Ireland, appearing zealous for the Presbiterian Faith, and having made a little Money, has gained some Credit among People of his Sort; this Person purchased some Spots of Ground, and procured Grants of more, close to the Barracks, where he run up Sheds, and placed poor People to sell his Spirits to the Soldiers, finding that his lucrative Trade has lately been checked, by inclosing the Barracks to prevent the Soldiers getting drunk all Hours of the Day and Night, He has commenced Patriot, and with the Assistance of the late Attorney General, and three or four more, egged on by Letters from Home, are at work again for an Assembly, and purpose having it signed by all they can influence: On the other Hand the better Sort of Canadians fear nothing more than popular Assemblies, which, they conceive, tend only to render the People refractory and insolent; Enquiring what they thought of them, they said, they understood some of our Colonies had fallen under the King's Displeasure, owing to the Misconduct of their Assemblies, and that they should think themselves unhappy, if a like Misfortune befell them. It may not be improper here to observe, that the British Form of Government, transplanted into this Continent, never will produce the same Fruits as at Home, chiefly, because it is impossible for the Dignity of the Throne, or Peerage to be represented in the American Forests; Besides, the Governor having little or nothing to give away, can have but little Influence; in Place of that, as it is his Duty to retain all in proper Subordination, and to restrain those Officers, who live by Fees, from running them up to Extortion; these Gentlemen, put into Offices, that require Integrity, Knowledge and Abilities, because they bid the highest Rent to the Patentee, finding themselves checked in their Views of Profit, are disposed to look on the Person, who disappoints them, as their Enemy, and without go-

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ing so far as to forfeit their Employments, they in general will be shy of granting that Assistance, the King's Service may require, unless they are all equally disinterested or equally Corrupt. It therefore follows, where the executive Power is lodged with a Person of no Influence, but coldly assisted by the rest in Office, and where the two first Branches of the Legislature have neither Influence, nor Dignity, except it be from the extraordinary Characters of the Men, That a popular Assembly, which preserves it's full Vigor, and in a Country where all Men appear nearly upon a Level, must give a strong Bias to Republican Principles; Whether the independent Spirit of a Democracy is well adapted to a subordinate Government of the British Monarchy, or their uncontrolable Notions ought to be encouraged in a Province, so lately Conquered, and Circumstanced as this is, I with great Humility submit to the Superior Wisdom of His Majesty's Councils: for my own part, I shall think myself Fortunate, if I have succeeded in rendering clear Objects, not allways distinctly discernable at so great a Distance

I am with much Respect and Esteem.
Your Lordship's Most Obedient Humble Servant

GUY CARLETON

The Earl of Shelburne One of His Majesty's
Principal Secretaries of State.

Endorsed :—Quebec 20th Jan^ry 1768 Go^vr Carleton.

HILLSBOROUGH TO CARLETON.[1]

WHITEHALL, March the 6th 1768.

SIR,

I take the Opportunity of writing to you by the first Ship going directly to Quebec, since my Admission into Office, & also to send you Duplicates of my Four former Letters—

* * * * * *

I come now to the Consideration of your Letters N° 17. 22. & 23.,[2] in which your Prudence and Judgment, your Care of the King's Service, and your Benevolence to His Subjects, are equally conspicuous to His Majesty.

I had the Honor to serve His Majesty at the Board of Trade. in the year 1763. when His Ma'ty was pleased to publish His Royal Proclamation relative to the new Colonies, and, whatever the legal sense conveyed by the Words of that Proclamation may be, of which I pretend not to be a Judge, I certainly know what was the Intention of those who drew the Proclamation, having myself been concerned therein; And I can take upon me to averr, that it never entered into Our Idea to overturn the Laws and Customs of Canada, with regard to Property, but that Justice should be administered agreably to them, according to the Modes of administering Justice in the Courts of Judicature in this Kingdom, as is the Case in the County of Kent, and many other

[1] Canadian Archives, Q 5-1, p. 344.
Wills, Earl of Hillsborough, and of the Kingdom of Ireland, was appointed the first Secretary of State for the Colonies when that Department was created in 1768. His appointment, as recorded in the Warrant Book, vol. 32, is dated 21st Jan. 1768. From Sept. 9th, 1763, he had been one of the Commissioners for Trade and Plantations. See Calendar of Home Office Papers, 1766-69, p. 422.
In this despatch Hillsborough passes in review the various letters which had been received from Carleton since the former came into office, and as several of these relate to religious and trade matters the review of them is omitted here.

[2] Letter No. 17 is that of Nov. 21st, 1767, in which Carleton encloses a petition from British merchants in Canada, stating their objections to the complete enforcement in Canada of the English bankruptcy laws. Agreeing with their position, he has suspended the introduction of such laws for the present. See Q 5-1, p. 245.
No. 22, is a letter of Dec. 10th, with enclosures, in response to a request from the Commissioners of the Treasury for information as to the revenue and expenditure of the Province. See Q 5-1, p. 299.
No. 23, is the letter of Carleton to Shelburne of Dec. 24th, see p. 201.

parts of England, where Gavel-kind Borough-English and several other particular customs prevail, altho' Justice is administered therein according to the Laws of England.

It was most unfortunate for the Colony of Quebec, that weak, ignorant, and interested Men, were sent over to carry the Proclamation into Execution, who expounded it in the most absurd Manner, oppressive and cruel to the last Degree to the Subjects, and entirely contrary to the Royal Intention. The Distance of the Colony, the Difficulties arising from many Circumstances, unnecessary for me to enumerate, and the Differences of Opinion occasioned by various Causes, have prevented, as yet, the necessary Measures from being taken, to correct this original and fatal Mistake; But I trust I shall soon be impowered to signify His Majesty's Pleasure, to you, to carry into Execution, such as will not only releive His Majesty's new Subjects from the uncertain, and consequently unhappy Situation, they are now in; but give them entire Satisfaction for the future, by securing to them their Property upon a stable Foundation, and rendering the Colony more flourishing and happy than it has ever been.

I have, in the mean Time, His Majesty's Commands, to express His Satisfaction in your prudent conduct relative to the Applications mentioned in your Letter N° 17. to have been made to you for a Commission of Bankruptcy, as it is impossible to conceive, that it could ever be His Majesty's Intention signified, either by the Proclamation, or by the Ordinance for the Establishment of Courts of Judicature, to extend Laws of that particular and municipal Nature to the Colony, even if the Intention had been to have overturned the Customs of Canada, and it would be full as reasonable to make a poor Rate under the 43d of Elizabeth, or to execute any other Act of Parliament of England, in Quebec, however intended for any local or particular purpose in this Kingdom.

* * * * * *

His Majesty approves of every Sentiment expressed in your Letter N° 23. upon which is founded the Idea of the Ordinance, a Draught of which you transmit with that Letter [1]; The Draught corresponds in almost every part with His Majesty's Opinions; But, as the whole State of the Colony will be immediately taken into Consideration, His Majesty's Pleasure is, that you should, for the present, postpone the enacting of that Ordinance; not doubting but you will, in the mean Time, continue to make use of every lenient and proper Argument, to convince His Majesty's new Subjects of His tender Concern for their Welfare and Security; and, by representing to them the natural Difficulties that must occur, in Regulations of so important a Nature, to be directed from so great a Distance, for the permanent Settlement of a Province, under Circumstances so uncommon and peculiar; prevail upon them to suffer patiently those Delays which are unavoidable.

I desire you will do me the Honor to accept my sincerest Congratulations upon your Appointment to the Government of Quebec.[2] I most truly rejoice at It, both on Account of His Majesty's Service, and the Prosperity and Happiness of His Mat'y's Subjects in that important Colony.

I am &c
HILLSBOROUGH

Lieutenant Governor of Quebec

Endorsed:—Drat to the Lieutenant-Governor of Quebec Whitehall March 6th 1768.

CARLETON TO SHELBURNE.[3]

QUEBEC 12th April 1768

My Lord!

Again I find myself under a necessity to repeat very near the same apologies, as in my last about the Fees; the Truth is, that while Offices are farmed out to the best bidder, Tenants will make the most of their Leases, and in their Turn hire such Servants,

[1] See p. 204.

[2] After acting as Lieutenant Governor of Quebec from April 1766 till the beginning of 1768, Carleton was appointed to the full position of "Captain General and Governor-in-chief of Quebec in America"—his appointment being dated Jan. 12th, 1768. See Calendar of Home Office Papers, 1766-69, p. 395.

[3] Canadian Archives, Q 5-2, p. 477.

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as work at the cheapest Rate, without much Enquiry, whether the same is well or ill done; The inclosed List of Grants,[1] Prior to the Conquest of the Country, has been greatly retarded, from the Persons employed therein, not being thoroughly versed in the Languages, at the same Time, it must be fairly acknowledged, the Ancient Records of the Country, are by no Means so clear and accurate as one could wish, However it will in General tolerably well exhibit, on what Terms, the Seigniorial Grants are held, for as to the Terres en Roture held immediately of the King, in the Towns of Quebec or Trois Rivieres, or else where, the same is not yet Compleated, but is in Hand, and shall be transmitted, without Loss of Time, as soon as finished.

Some of the Privileges contained in those Grants appear at first to Convey dangerous Powers into the Hands of the Seigneurs, that upon a more minute Enquiry, are found to be really little else than Ideal; *the Haute Moyenne et basse Justice*, are Terms of high Import but even under the French Government were so corrected, as to prove of little Signification to the Proprietors, for besides that they could Appoint no Judge without the Approbation of Government, there lay an Appeal from all the Private to the Royal Jurisdictions in every Matter exceeding half a Crown; it could not therefore be productive of Abuse, and as the Keeping of their own Judges became much too Burthensome for the Scanty Incomes of the Canadian Seigneurs, it was grown into so general a Disuse, there were hardly three of them in the whole Province at the Time of the Conquest.

All the Lands here are held of His Majesty's Castle of St. Lewis, and nothing I am persuaded, would be so agreable to the People, or tend more to securing the Allegiance of the new Subjects to His Majesty, as well as ensuring the Payment of those Fines and Dues, which here stand in the Lieu of Quit Rents, than a formal Requisition of all those immediately holding of the King, to pay Faith and Homage to him at his Castle of St. Lewis; The Oath, which the Vassals take upon the Occasion, is very Solemn and Binding, they are obliged to furnish what they here Term their Aveu et Denombrement, which is an exact Account of their Tenants and Revenues, and to discharge whatever they owe their Sovereign, and to appear in Arms for his Defence, in Case His Province is ever attacked; And at the same Time that it would prove a Confirmation to the People of their Estates and Immunities, after which they most ardently sigh, it might be a Means to recall out of the French Service, such as have yet Possessions in this Country, or at least oblige them to dispose of their Effects here, and although it may not be possible, at least for a Time, entirely to prevent that Intercourse, every Measure, that can tend towards putting an End to it, must be Useful.

The Canadian Tenures differ, it is true, from those in the other Parts of His Majesty's American Dominions, but if confirmed, and I cannot see how it well can be avoided, without entirely oversetting the Properties of the People, will ever secure a proper Subordination from this Province to Great Britain; if it's detached Situation be Constantly Rembered, and that on the Canadian Stock we can only depend for an Increase of Population therein, the Policy of Continuing to them their Customs and Usages will be sufficiently Evinced.

For the foregoing Reasons it has occurred to His Majesty's Servants here, that it might prove of Advantage, if, whatever Lands remain Vacant in the Interior Parts of the Province, bordering upon those, where the old Customs prevail, were henceforth granted on the like Conditions, taking care that those at Gaspey and Chaleur Bay, where the King's old Subjects ought chiefly to be encouraged to settle, were granted on such Conditions only, as are required by His Royal Instructions; And, upon this Consideration, have some Grants, in the interior Parts, been deferred Carrying into Execution, untill I could receive the sense of Government thereupon.

Your Lordship may have perceived by some of my former Letters, that long before His Majesty's Order in Council of the 28th August[2] came to my Hands, the Matter therein Recommended had been the Object of my most serious Consideration; the Receipt of that Order has induced me to alter some Part of the Plan I at first Proposed

[1] See Canadian Archives, Q 5-2, pp. 560-587.

[2] See p.199.

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to myself, and have accordingly directed the Abridgment mentioned to Your Lordship in my Letter of 24th December (No. 23)[1] and undertaken by some of the ablest Men in the Province to be further extended, and rendered more full and Copious, and to Comprise all the Laws in Force at the Conquest; in the mean Time, to give Your Lordship, and His Majesty's other Servants, some Idea of the Nature of them, I herewith transmit to Your Lordship a short Sketch, exhibiting only the Heads of those Laws[2]; the several Matters Recommended by that Order to the King's Servants here, shall be prepared with all the Dispatch, that the Importance, as well as Extent of the Subject, can possibly admit of.

I am with much Respect and Esteem
Your Lordship's Most Obedient Humble Servant

GUY CARLETON

The Earl of Shelburne One of His Majesty's
Principal Secretaries of State, &c.

INSTRUCTIONS TO GOVERNOR CARLETON 1768[3]

INSTRUCTIONS to Our Trusty and Well beloved Guy Carleton Esquire, Our Captain General and Governor in Chief in and over Our Province of Quebec in America and of all Our Territories Dependent thereupon Given

First—With these Instructions You will receive Our Commission under Our Great Seal of Great Britain, constituting You Our Captain General and Governor in Chief in and Over Our Province of Quebec in America, bounded on the Labrador Coast by the River St John, and from thence by a Line drawn from the Head of that River through the lake St John to the South End of the Lake Nipisson; from whence the said Line crossing the River St Lawrence and the Lake Champlain in forty-five Degrees of North Latitude, passes along the Highlands which divide the Rivers that Empty themselves into the said River St Lawrence from those which fall into the Sea, and also along the North Coast of the Bay des Chaleurs and the Coast of the Gulph of St Lawrence to Cape Rosieres and from thence crossing the Mouth of the River St Lawrence by the West End of the Island of Anticosti, terminates at the aforesaid River St John- You are therefore to take upon you the Execution of the Office and Trust We have reposed in You, and the Administration of Government, and to do and Execute all things in due manner that shall belong to Your Command according to the several powers and Authorities of Our said Commission under Our Great Seal of Great Britain and these Our Instructions to You, or according to such further powers and Instruction as shall at any time hereafter be Granted or appointed You under Our Signet and Sign Manual or by Our Orders in Our privy Council, and you are to call

[1] See p. 201.

[2] The summary of French laws, here mentioned, follows this despatch under the title, "Coutumes et usages anciens De La Province de Quebec." and will be found in Q 5-2 pp. 482-559. The more complete compilation of the French law and constitution, represented as in force in Canada before the Conquest, was prepared, chiefly under the supervision of F. J. Cugnet, and sent to Britain in Sept. 1769. In 1772 several compilations of the French Canadian laws &c. were published; the most important being:—"An Abstract of those parts of the Custom of the Viscounty and Provostship of Paris which were Received and Practised in the Province of Quebec in the time of the French Government. Drawn up by a select Committee of Canadian Gentlemen well skilled in the laws of France and of that Province by the desire of the Hon. Guy Carleton Esq. Governor in Chief of the said Province, London 1772."

"An Abstract of the Several Royal Edicts & Declarations and Provincial regulations and ordinances, that were in force in the Province of Quebec in the time of the French Government; and of the Commissions of the several Governors General and Intendants of the same Province during the same period. By Francis Joseph Cugnet Esq. Secretary to the Governor and Council of the said Province for the French Language. By direction of Guy Carleton 1772."

[3] Canadian Archives, M. 230. p. 61.

together at Quebec, which We do appoint to be the place of Your residence, and the principal Seat of Government the following persons whom We do hereby appoint to be Our Council for Our said Province of Quebec, viz[t]. William Hey, Our Chief Justice of Our said Province, Hector Theophilus Cramahé, James Goldfrap, Hugh Finlay, Thomas Mills, Thomas Dunn, Walter Murray, Samuel Holland, Francis Mounier, Benjamin Price, and Colin Drumond Esquires—It is nevertheless Our Will and Pleasure, that Our Chief Justice or Chief Justice for the time being shall not be capable of taking upon him the Administration of the Government upon your Death or Absence, or the Death or Absence of the Commander in Chief for our said province for the time being—

2. And You are with all due and usual Solemnity to cause Our said Commission to be read and published at the said meeting of Our Council which being done, You shall then take and also administer to each of the members of Our said Council, the Oaths mentioned in an Act passed in the first year of the Reign of His Majesty King George the first, intitled "An Act for the further Security of His Majestys person "and Government, and the Succession of the Crown, in the Heirs of the late Princess "Sophia being Protestants, and for extinguishing the hopes of the pretended Prince "of Wales and his Open and secret abettors," And in an Act passed in the sixth Year of Our Reign, intitled, "An Act for altering the Oath of Abjuration and the Assur-"ance, and for amending so much of An Act of the seventh year of Her late Majesty "Queen Anne, Intituled, An Act for the Improvement of the Union of the two King-"doms, as, after the time therein Limitted requires the Delivery of certain Lists and "Copies therein mentioned to persons Indicted of High Treason or Misprison of "Treason ;" as also make and Subscribe, and cause them to make and Subscribe, the Declaration mentioned in an Act of Parliament made in the 25[th] year of the Reign of King Charles the second intituled "An Act for preventing Dangers which may "happen from Popish Recusants"—And You and every one of them are likewise to take an Oath for the due Execution of Your and their places and Trusts, with regard to Your and their equal and impartial Administration of Justice ; And You are also to take the Oath required by An Act passed in the seventh and eighth Years of the Reign of King William the third to be taken by Governors of Plantations to do their Utmost that the Laws relating to the plantations be observed.

3. And that We may be always Informed of the Names and Characters of persons fit to Supply the Vacancies which shall happen in Our said Council, You are to transmit to Us by One of Our principal Secretaries of State the Names and Characters of three persons Inhabitants of Our said province who You shall esteem the best Qualified for that Trust and You are also to Transmit a Duplicate of the said Account to Our Commissioners for Trade and plantations for their Information.

4. And if it shall at any time happen, that by the Death, Departure out of Our said province, suspension of any of Our said Councellors, or otherwise, there shall be a Vacancy in Our said Council, Our Will and Pleasure is that You signify the same to Us, by One of Our principal Secretaries of State, by the first Opportunity, that We may under Our Sign Manual, constitute and appoint others in their Stead ; to which end You are whenever such Vacancy happens, to transmit unto Us by One of Our principal Secretaries of State, the Names of three or more persons, Inhabitants of Our said province whom you shall esteem best Qualified, for such Trust, and you are also to Transmit duplicates of such Accounts to Our Commissioners for Trade and plantations for their Information.

5. But that Our Affairs may not Suffer for want of a due number of Councillors ; if ever it shall happen that there be less than Seven residing in Our said province, We do hereby give and grant unto You the said Guy Carleton full power and Authority to chuse as many persons out of the principal Inhabitants of our said province, as will make up the full number of the Council to be seven and no more, which persons so chosen and appointed by You, shall be to all Intents and purposes, Councillors in Our said Province 'till either they shall be confirmed by Us, or, by the Nomination of others by Us under Our sign Manual and Signet, Our said Council shall have seven, or more persons in it.

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6. And it is Our Will and Pleasure, that You do, and You are hereby Authorized and Impowered to Suspend and amove any of the Members of Our said Council, from Sitting, Voting, and Assisting therein, if You shall find just Cause for so doing, and to appoint others in their Stead until Our pleasure shall be known, It is nevertheless Our Will and Pleasure, that You do not Suspend or Remove any of the Members of Our Council when they shall have been Confirmed by Us as aforesaid, without good and sufficient cause, nor without the Consent of the Majority of the said Council, signified in Council, after due Examination of the Charge against such Councillor, and his Answer thereunto; and in Case of suspension of any of them, You are to cause Your Reasons for so doing, together with the Charges and proofs against such person, and his Answer thereto be duly entered upon the Council-Books, And forthwith to transmit Copies thereof to Us, by one of Our principal Secretaries of State, and also Duplicates to Our Commissions for Trade and Plantations for their Information nevertheless if it should happen that You should have Reasons for Suspending any of the said Persons, not fit to be communicated to the Council, You may in that Case suspend such person without the Consent of Our said Council; but You are thereupon immediately to send to Us by One of Our principal Secretaries of State An Account of Your proceedings therein, together with Your Reasons at large for such suspension as also your Reasons at large for not communicating the same to the Council and Duplicates thereof by the first opportunity and you are also to transmit a Duplicate of such Account to Our Commissioners for Trade and plantations for their Information.

7. Whereas We are Sensible that Effectual Care ought to be taken to oblige the Members of Our Council to a due attendance therein, in order to prevent the many Inconveniences that may happen for the want of a Quorum of the Council to transact business as occasion may require; It is Our Will and Pleasure that if any of the Members of Our said Council shall hereafter absent themselves from the said Province and Continue absent above the Space of Six Months together, without leave from you, or from Our Commander in Chief of Our said Province for the time being first obtained, under your or his Hand and Seal, or shall remain absent for the Space of One Year without Our Leave given them under Our Royal Signet and Sign Manual their place or places in the said Council shall immediately thereupon become Void: and that if any of the members of Our said Council, then residing in the province under Your government shall hereafter wilfully absent themselves when duly summoned, without a just and lawful Cause and shall persist therein after admonition, you suspend the said Councillors so absenting themselves 'till Our further pleasure be known giving Us timely Notice thereof; And We do hereby Will and Require You that this Our Royal Pleasure be Signified to the several Members of Our Council aforesaid, and entered in the Council-Books of the province under Your Government as a Standing rule—

8. You are forthwith to communicate such and so many of these Our Instructions to Our said Council, wherein their Advice and Consent are mentioned to be requisite, as likewise all such others, from time to time, as You shall find Convenient for Our Service to be Imparted to them—

9. You are to permit the Members of Our said Council to have and Enjoy freedom of Debate and Vote in all Affairs of publick concern that may be debated in Council—

10. And Whereas it is directed by Our Commission to You under Our Great Seal, that as soon as the Situation and Circumstances of Our said Province will admit thereof You shall with the Advice of Our Council, Summon and call a general Assembly of the Freeholders of Our said province, You are therefore as soon as the more pressing Affairs of Government will allow, to give all possible attention to the carrying this Important Object into Execution, but as it may be Impracticable for the present to form such an Establishment You are in the mean time to make such Rules and Regulations by the Advice of our said Council as shall appear to be necessary for the peace Order and good government of our said province; taking Care that nothing be done or passed that shall any way tend to affect the Life Limb or Liberty of the

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Subject, or to the Imposing any Duties or Taxes; and that all such rules and Regulations be transmitted to Us by the first Opportunity after they are passed and made for our Approbation or Disallowance. And it is Our Will and Pleasure that when An Assembly shall have been Summoned and met in such manner as you in Your discretion shall think most proper, or as shall be hereafter directed and appointed, the following Regulations be carefully observed in the framing and passing all such Laws Statutes and Ordinances, as are to be passed by You with the Advice and Consent of Our said Council and Assembly Vizt. That the Stile of Enacting the said Laws, Statutes and Ordinances be by the Governor, Council and Assembly and no other— That each different matter be provided for by a different Law without including in one and the same Act, such things as have no proper relation to each other;—That no Clause be inserted in any Act or Ordinance which shall be foreign to what the title of it Imports and that no perpetual Clause be part of any temporary Law; —That no Law or Ordinance whatever be suspended, altered Continued, revived or repealed by general Words; but that the title and Date of such Law or Ordinance be particularly mentioned in the Enacting part;—That no Law or Ordinance respecting private property be passed without a Clause suspending it's Execution, until Our Royal Will and pleasure is known, nor without a Saving of the Right of Us, Our Heirs and Successors, and of all Bodies Politick and Corporate, and of all other persons except such as are mentioned in the said Law or Ordinance, and those claiming by, from, or under them, and before such Law or Ordinance is passed, proof must be made before You in Council and Entered in the Council-Books, that publick Notification was made of the partys Intention to apply for such Act in the several parish Churches, where the Lands in Question lye for three Sundays at least successively before any such Law or Ordinance shall be proposed; and you are to transmit and Annex to the said Law or Ordinance a Certificate under your Hand that the same passed through all the Forms above mentioned; That in all Laws or Ordinances for the Levying Money, or Imposing Fines, forfeitures or penalties, express mention be made, that the same is granted or reserved to Us Our Heirs and Successors for the publick Uses of the said province, and the Support of the Government thereof, as by the said Law or Ordinance shall be directed; and that a clause be Inserted, declaring that the Money arising by the Operation of the said Law or Ordinance shall be accounted for unto Us in this Kingdom, and to Our Commissioners of the Treasury or Our High Treasurer for the Time being and audited by Our Auditor General of our Plantations or his Deputy—That all such Laws, Statutes and Ordinances be transmitted by You within three Months after their passing or sooner if opportunity offers, to Us, by One of Our principal Secretaries of State and Duplicates thereof to Our Commissioners for Trade and plantations for their Information—That they be fairly abstracted in the Margents and accompanied with very full and particular observations upon each of them (that is to say) whether the same is Introductive of a new Law, Declaratory of a former Law, or does repeal a Law then in being And you are also to transmit in the fullest manner the Reasons and Occasion for Enacting such Laws or Ordinances together with fair Copies of the Journals of the proceedings of the Council and Assembly which You are to require from the Clerks of the said Council and Assembly——

11. And to the End that nothing may be passed or done to the prejudice of the true Interests of this Our Kingdom the Just Rights of Us Our Heirs and Successors or the property of Our Subjects It is Our Express Will and pleasure, That no Law whatsoever which shall in any wise tend to Affect the Commerce or Shipping of this Kingdom, or which shall any ways relate to the Rights and prerogative of Our Crown or the property of Our Subjects or which shall be of an Unusual or Extraordinary Nature be finally ratified or Assented to by You, until You shall have first transmitted unto Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and plantations for their Information a Draught of such Law, and shall have received Our Directions thereupon Unless You take Care that a Clause be Inserted therein, suspending and Deferring the Execution thereof until Our pleasure is known concerning the same.—

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12 And Whereas Laws have formerly been Enacted in several of Our Plantations in America for so short a time that Our Royal Assent or Refusal thereof could not be had before the time for which such Laws were Enacted did expire, You shall not give Your Assent to any Law that shall be Enacted for a less time than two Years, except in Cases of imminent Necessity, or imminent temporary expediency and You shall not re-enact any Law to which Our Assent shall have been once refused, without Express leave for that purpose first obtained from Us upon a full representation by You to be made to Us by One of Our principal Secretaries, and to Our Commissioners for Trade and Plantations for their Information, of the Reasons and necessity for passing such Law; nor give Your Assent to any Law for repealing any other Law, which shall have passed in Your Government, and shall have received Our Royal Approbation unless You take Care that there be a Clause inserted therein Suspending and Deferring the Execution thereof until Our pleasure shall be known concerning the same—

13 And We do particularly require you to take care, that fair Books of Accounts of all Receipts and Payments of all publick Money be duly kept, and the truth thereof attested upon Oath and that all such Accounts be audited and attested by Our Auditor General of our plantations or his Deputy, who is to Transmit Copies thereof to Our Commissioners of Our Treasury, or to Our High Treasurer for the time being And that You do every half Year or oftener, send another Copy thereof, Attested by Yourself to Our Commissioners for Trade and plantations, and duplicates thereof by the next Conveyance; in which Books shall be specified, every particular Sum raised or Disposed of together with the Names of the persons to whom any payment shall be made, to the End We may be satisfied of the Right and due application of the Revenue or Our said province with the probability of the Increase or diminution of it under every head and Article thereof

14 And Whereas the Members of several Assemblies in the plantations have frequently Assumed to themselves privileges no ways belonging to them especially of being protected from Suits at Law during the Term they remain of the Assembly to the great prejudice of their Creditors and the Obstruction of Justice; and some Assemblies have presumed to adjourn themselves at pleasure without leave from Our Governor first obtained; and others have taken upon themselves the sole framing of Money Bills, refusing to let the Council Alter or amend the same; all which practices are very detrimental to Our Prerogative. If therefore you find that the Members of Our Province of Quebec Insist upon any of the said Privileges, You are to signify to them that it is Our Express Will and Pleasure, that You do not allow any protection to any member of the Council or Assembly further than in their persons, and that only during the sitting of the Assembly, and that You do not allow them to adjourn themselves otherwise than de diem, except Sundays and Holidays, without Leave from you or the Commander in Chief for the time being first obtained: It is also Our further pleasure that the Council have the like power of framing Money Bills as the Assembly.—

15 And Whereas by Our aforesaid Commission under Our Great Seal of Great Britain, You are authorized and impowered with the Advice and Consent of Our Council to Constitute and appoint Courts of Judicature and Justice; It is therefore Our Will and Pleasure, that You do as soon as possible apply Your attention to these great and Important Objects and that in forming the necessary Establishments for this purpose, You do consider what has been Established in this respect in Our other Colonies in America more particularly in Our Colony of Nova Scotia—

16 Our Will and Pleasure is, that You or the Commander in Chief for the time being do in all civil Causes, on application being made to You or the Commander in Chief for the time being for that purpose, permit and allow appeals from any of the Courts of Common Law in Our said Province until You or the Commander in Chief, and the Council of the said Province, and You are for that purpose to Issue a Writ in the manner which has been usually accustomed, returnable before Yourself and the Council of the said province, who are to proceed to hear and Determine such Appeal, wherein such of the said Council, as shall be at that Time Judges of the Court from

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whence such appeal shall be so made to You Our Captain General, or to the Commander in Chief for the time being and to Our said Council as aforesaid shall not be admitted to Vote upon the said Appeal, but they may nevertheless be present at the hearing thereof, to give the Reasons of the Judgment given by them, in the Causes wherein such Appeal shall be made provided nevertheless that in all such appeals the Sum or Value appealed for do exceed the sum of three hundred pounds Sterling, and that Security be first duly given by the Appellant to Answer such Charges as shall be awarded in Case the first Sentence be affirmed; and if either party shall not rest satisfied with the Judgment of You or the Commander in Chief for the time being and Council as aforesaid, Our Will and Pleasure is that they may then appeal unto Us in Our privy Council; Provided the Sum or Value so appealed for unto Us do exceed five hundred pounds Sterling, and that such appeal be made within fourteen Days after Sentence and good security given by the Appellant, that he will Effectually prosecute the same and answer the Condemnation as also pay such Costs and Damages as shall be awarded by Us in Case the sentence of You or the Commander in Chief for the time being and Council be affirmed; provided nevertheless where the matter in Question relates to the taking or Demanding any Duty payable to Us or to any Fee of Office, or annual Rents or other such like matter or thing where the Rights in future may be bound in all such Cases You are to admit An Appeal to Us in Our privy Council, though the Immediate Sum or Value appealed for be of less Value; And it is Our further Will and Pleasure, that in all places where, by Your Instructions you are to admit Appeals unto Us in Our privy Council, execution be suspended until the final Determination of such Appeal, unless good and sufficient Security be given by the Appellee to make ample Restitution of all that the Appellants shall have lost by means of such Decree or Judgment in Case upon the Determination of such Appeal such Decree or Judgment should be reversed and restitution awarded to the Appellant.

17. You are also to admit Appeals unto Us in Our privy Council in all Cases of Fines Imposed for Misdemeanours provided the Fines so Imposed, Amount to or Exceed One hundred pounds Sterling; the Appellant first giving good Security, that he will Effectually prosecute the same, and answer the Condemnation If the Sentence by which such fine was Imposed in Quebec shall be Confirmed.

18. You are, with the Advice and Consent of Our Council in the Province under Your government to take Especial care to regulate all Sallaries and fees belonging to places, or paid upon Emergencies, that they be within the bounds of Moderation, and that no Exaction be made on any Occasion whatsoever; as also that Tables of all Fees be publickly hung up in all places where such Fees are to be paid and You are to transmit Copies of all such Tables of Fees unto Us by One of Our principal Secretaries of State and duplicates thereof to Our Commissioners for Trade and Plantations for their Information—

19. It is Our Express Will and Pleasure that You do by the first Opportunity and with all convenient Speed transmit unto Us by One of Our principal Secretaries of State and duplicates thereof to Our Commissioners for trade and plantation for their Information Authentick Copies of all Acts Orders Grants Commissions or other powers by Virtue of which any Courts Offices, Jurisdictions, pleas, Authorities, Fees and privileges, have been Settled or Established, for our Confirmation or Disallowance; and in case all or any of them shall at any time or times be disallowed and not approved then such and so many as shall be disallowed and not approved, and so Signified by Us shall cease determine and be no longer continued or put in practice.—

20 You shall not appoint any person to be a judge or Justice of the peace, without the advice and Consent of the Majority of the Members of Our Council, present in, nor shall You Execute yourself or by Deputy and of the said Offices; and it is Our further Will and Pleasure that all Commissions to be Granted by You to any person or persons to be Judges or Justices of the peace, or other necessary officers, be granted during pleasure only—

21. You shall not displace any of the Judges Justices of the peace or other Officers or Ministers without good and sufficient Cause, which You shall Signify in the fullest and most Distinct manner to Us by one of our principal Secretaries of State and to Our Commissioners for Trade and Plantations for their Information—

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22. And Whereas frequent Complaints have heretofore been made of Great Delays and undue proceedings in the Courts of Justice in several of Our plantations, whereby many of Our Good Subjects have very much Suffered, And it being of the greatest Importance to Our Service and to the Welfare of Our Plantations that Justice be every where speedily and Duly administered, and that all Disorders Delays and other undue practices, in the administration thereof be Effectually prevented; We do particularly require You to take Especial Care, that in all Courts, where you are Authorized to preside, Justice be Impartially administered, and that in all other Courts, established within Our said Province all Judges and other persons therein concerned do likewise perform their several Duties without any Delay or partiality.

23. You are to take Care, that all Writs be issued in Our Name throughout the Province under Your Government.

24. Whereas there are several Offices in Our plantations Granted under the Great Seal of Great Britain, and Our Service may be very much prejudiced by reason of the absence of the Patentees, and by their appointing Deputies not fit to officiate in their Stead, You are therefore to Inspect such of the said Offices as are in the province under Your Government, and to Enquire into the Capacity and behaviour of the persons exercising them, and to report thereupon to Us by One of Our principal Secretaries of State and to Our Commissioners for Trade and Plantations what You think fit to be done or Altered in Relation thereunto; and You are upon the misbehaviour of any of the said Patentees or their Deputies to Suspend them from the Execution of their Office 'till You shall have represented the whole matter unto Us as aforesaid and received our Directions therein And in Case of the Death of any such Deputy, It is Our Express Will and pleasure, that you take Care, that the person appointed to Execute the place until the patentee can be Informed thereof and appoint another Deputy, do give sufficient Security to the patentee, or, in Case of Suspension to the person Suspended to be answerable to him for the profits accruing during such Interval by death or during Suspension, in Case We shall think fit to restore the person Suspended to his place again—It is nevertheless Our Will and pleasure that the person Executing the place during such Interval, by Death or Suspension shall for his Encouragement receive the same Profits as the person suspended or dead did receive; And it is Our further Will and Pleasure, that, in Case of a Suspension of a patentee, the person appointed by You to Execute the office during such Suspension shall receive a Moiety of the profits which would otherwise become due to such patentee, giving Security to such patentee to be answerable to him for the other Moiety, in Case We shall think fit to restore him to his Office again, And it is Our further Will and pleasure, that You do countenance and give all due Encouragement to all Our Patent Officers in the Enjoyment of their legal and Accustomed Fees, Rights privileges and Emoluments according to the true Intent and meaning of their patents—

25. You shall not by Colour of any power or Authority hereby or otherwise Granted or mentioned to be Granted unto You, take upon You to give, grant or Dispose of any office or place within Our said Province which now is or shall be Granted under the Great Seal of this Kingdom, or to which any person is or shall be appointed by Warrant under Our Signet and Sign Manual, any further than that You may, upon the Vacancy of any such Office or place, or upon the Suspension of any such Officer by you, as aforesaid put in any fit person to Officiate in the Interval 'till You shall have represented the matter unto Us by one of our principal Secretaries of State; and to Our Commissioners for Trade and Plantations, for their Information as aforesaid, which You are to do by the first Opportunity, and 'till the said Office or place be disposed of by Us Our Heirs or Successors under the Great Seal of this Kingdom, or until some person shall be appointed thereto by Warrant under Our Signet and Sign Manual or Our further Directions be given therein—

26. And Whereas several Complaints have been made by the Officers of Our Customs in Our plantations in America, that they have frequently been obliged to serve as Jurors, and personally to Appear in Arms whenever the Militia is drawn Out and thereby are much hindred in the Execution of their Employments, Our Will and Pleasure is that You take Effectual Care and give the necessary Directions that the

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several officers of Our Custom be Excused and exempted from serving on any Juries, or personally appearing in Arms in the Militia, unless in Cases of absolute Necessity or serving any parochial Offices which may hinder them in the Execution of their Duty—

27. And Whereas We have Stipulated by the late Definitive Treaty of Peace concluded at Paris the 10th Day of February 1763 to Grant the Liberty of the Catholick Religion to the Inhabitants of Canada, and that We will consequently give the most precise, and most Effectual Orders, that Our New Roman Catholick Subjects in that Province may profess the Worship of their Religion according to the Rites of the Romish Church, as far as the Laws of Great Britain permit ; It is therefore Our Will and Pleasure that You do in all things regarding the said Inhabitants Conform with Great Exactness to the Stipulations of the said Treaty in this respect—

28. You are as soon as possible to Summon the Inhabitants to meet together at such time or times, place or places, as You shall find Convenient in Order to take the Oath of Allegiance, and make and Subscribe the Declaration of Abjuration mentioned in the aforesaid Act passed in the first Year of the Reign of King George the 1st for the further Security of His Majestys person and Government, and the Sucession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for Extinguishing the Hopes of the pretended Prince of Wales and his Open and Secret Abettors, and in the aforesaid Act passed in the Sixth Year of Our Reign for Altering the Oath of Abjuration and the Assurance and for amending so much of An Act of the seventh Year of her late Majesty Queen Anne Intitled An Act for the Improvement of the Union of the two Kingdoms as after the time therein Limitted requires the Delivery of certain Lists and Copies therein mentioned to persons Indicted of High Treason, or Misprison of Treason ; which Oath shall be Administered to them by such person or persons as You shall Commissionate for that purpose, and in Case any of the said French Inhabitants shall refuse to take the said Oath and make and Subscribe the Declaration of Abjuration as aforesaid, You are to cause them forthwith to Depart out of Our said Government—

29. And it is Our further Will and Pleasure that all such Inhabitants professing the Religion of the Romish Church, do at all meetings, or at such other time or times You shall think proper and in the manner you shall think least alarming and Inconvenient to the said Inhabitants Deliver in upon Oath an Exact Account of all Arms and Ammunition of every sort in their Actual possession, and so from time to time, of what they shall receive into their Possession as aforesaid—

30. You are as soon as possible to Transmit to Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and plantations for their Information, an Exact and particular Account of the Nature and Constitution of the several Religious Communities of the Romish Church, their Rights Claims privileges and property, and also the Number Situation and Revenues of the several Churches heretofore established in Our said province together with the Number of Priests or Curates Officiating in such Churches—

31. You are not to Admit of any Ecclesiastical Jurisdiction of the See of Rome, or any other foreign Ecclesiastical Jurisdiction whatever in the province under Your Government—

32. And to the End that the Church of England may be Established both in principles and practice, and that the said Inhabitants may by Degrees be Induced to Embrace the Protestant Religion, and that their Children be brought up in the principles of it We do hereby declare it to be Our Intention, when the said Province shall have been accurately Surveyed and Divided in Townships, Districts precincts or parishes in such manner as shall be herein after directed, all possible Encouragement shall be given to the Erecting protestant Schools in the said Districts Townships and precincts by Settling appointing and Allotting proper Quantities of Land for that purpose ; and also for a Glebe and maintenance for a Protestant Minister and protestant School Masters ; and You are to Consider and to Report to Us by one of Our principal Secretaries of State and to Our Commissioners for Trade and Plantations for their Information, by what other means the Protestant Religion may be promoted, established, and Encouraged in Our said province under Your Government.

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33. And You are to take especial Care that God Almighty be devoutly and duly served throughout Your Government; the Book of Common Prayer as by Law Established read each Sunday and Holiday; and the blessed Sacrament administered according to the Rites of the Church of England—

34. You are not to prefer any Protestant Minister to any Ecclesiastical Benefice in the Province under your Government without a Certificate from the Right Reverend Father in God the Lord Bishop of London, of his being Conformable to the Doctrine and Discipline of the Church of England, and of good Life and Conversation—And if any person hereafter preferred to a Benefice shall appear to You to give Scandal either by his Doctrine and manners You are to use the best means for his Removal.—

35. You are to give Orders forthwith that every Orthodox Minister within Your Government be one of the Vestry in his respective parish, and that no Vestry be held without him, except in Case of Sickness or after Notice of a Vestry Summoned he omit to come—

36. And to the End that the Ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government as far as conveniently may be, We do think fit that You give all Countenance and Encouragement to the Exercise of the same, excepting only the collating to Benefices, granting Licences for Marriage and probates of Wills which We have reserved to You our Governor and to the Commander in Chief of Our said province for the time being—

37. And We do further Direct that no Schoolmaster who shall arrive in Our said Province from this Kingdom, be henceforward permitted to keep School, without the Licence of the said Lord Bishop of London, and that no other person now there or that shall come from other parts shall be admitted to keep School in Your Government without Your Licence first obtained.

38. And You are to take Especial Care, that a Table of Marriages, established by the Cannons of the Church of England be hung up in all places of Publick Worship according to the Rites of the Church of England.

39. And it is Our further Will and Pleasure, that in Order to Suppress as much as in You lies, every Species of Vice and Immorality, You forthwith do cause all Laws already made against Blasphemy, Prophaneness, Adultry, Fornication, Polygamy, Incest, profanation of the Lords Day, Swearing and Drunkenness to be rigorously put in Execution in every part of Your Government, and that You take due care for the punishment of these, and every other Vice and Immorality by presentment upon Oath, to be made to the Temporal Courts by the Church Wardens of the several parishes, at proper times of the Year to be appointed for that Purpose; and for the further Discouragement of Vice, and Encouragement of Virtue and good living (that by such Examples the Infidels may be Invited and persuaded to Embrace the Christian Religion,) You are not to admit any persons to publick Trusts and Employments in the Province under Your Government whose ill Fame and Conversation may Occasion Scandal—

40. And it is Our further Will and Pleasure, that all and every the French Inhabitants in Our said Province who are now possessed of Lands within the said Province in Virtue of Grants or Concessions made before the Signing of the preliminary Articles of Peace on the 3rd Day of Novr, 1762, within such Limitted time as You in Your Discretion shall think fit, Register the several Grants or other Deeds, or Titles, by which they hold or Claim such Lands, in the Secretarys Office which said Grants, Deeds or other Titles, shall be Entered at large in the said Office, so that the particular Quantity of Land, it's Scite and Extent, the Conditions upon which it is Granted, either as to Rents, Services, or Cultivation, may appear fully and at length—

41. And in Case it shall Appear, upon a Strict and Accurate Examination of the said Grants and Title Deeds, to be taken in such manner as You shall think proper, that any of the Grantees or Persons claiming Lands under such Grants and Title Deeds, are in Possession of more Land than is contained within such Grants or other Concessions, or that the Terms and Conditions upon which the Lands were Granted have not been complied with agreable to what is Stipulated in such Grants or Concessions, It is Our Will and Pleasure, that You forthwith represent the same to Us, by One of Our prin-

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cipal Secretaries of State to the End You may receive such Directions thereupon as the nature and circumstances of the Case shall appear to require, and You are to send a Duplicate of such Representation to Our Commissioners for Trade and plantations for their Information—

42. And Whereas it is necessary in Order to the advantageous and Effectual Settlement of Our said Province, that the true State of it should be fully known; You are therefore as soon as conveniently may be, to cause an Accurate Survey to be made of the said Province, by such Able and Skilful person as is or shall be appointed for that Service, who is to Report to You in Writing for Your Judgment in the measures which You may in General pursue for the making of Settlements, not only the Nature and Quality of the Soil and Climate, the Rivers Bays and Harbours, and every other Circumstance attending the Natural State of it; but also his opinion in what manner it may be most conveniently laid out into Counties, and to annex to his Report a Map of such Survey, with the several Divisions proposed marked upon it, But as the making such Survey, with the several Divisions proposed will be a Work of Great Length, You are in the mean time to carry on Settlements upon that plan, which shall appear to you to be most Expedient from the best Information You can collect—

43. And Whereas it has been found by Experience, that the Settling Planters in Townships hath very much redounded to their Advantage, not only with respect to the Assistance they have been able to Afford each other in their Civil Concerns, but likewise with regard to the Security they have thereby acquired against the Insults and Incursions of neighbouring Indians or other Enemies; You are therefore to lay out Townships of a Convenient Size and Extent in such places as You in Your Discretion shall Judge most proper; And it is Our Will and Pleasure that each Township do consist of about twenty thousand Acres, having as far as may be natural Boundaries, extending up into the Country, and comprehending a necessary part of the River S^t^ Lawrence where it can be conveniently had—

44. You are also to cause a proper place in the most convenient part of each Township to be marked out for building a Fort sufficient to contain such a Number of Families as You shall judge proper to Settle there, with Town and Pasture Lots convenient to each Tenement, taking Care that the said Town be laid out upon, or as near as conveniently may be to some Navigable River or the Sea Coast, and You are also to reserve to Us proper Quantities of Land in each Township for the following purposes, Viz^t^ For Erecting Fortifications and Barracks where necessary or for other Military or Naval Services, and more particularly for the Growth and Produce of Naval Timber, if there are any Wood Lands fit for that purpose—

45. And it is Our further Will and Pleasure that a particular Spot in or as near each Town as possible be set apart for the Building a Church, and four hundred Acres adjacent thereto, allotted for the Maintenance of a Minister and two hundred Acres for a Schoolmaster.

46. And You are to give Strict Orders to the Surveyors whom You shall Employ to mark out the said Townships and Towns, to make returns to you of their Surveys as soon as possible with a particular Description of each Township, and the Nature of the Soil within the same.

47. And You are to oblige all such persons, as shall be appointed to be Surveyors of the said Lands in each Township, to take an Oath for the due performance of their Offices and for obliging them to make exact Surveys of all Lands required to be set out—

48 And Whereas nothing can more effectually tend to the Speedy settling our said Colony, the Security of the property of Our Subjects and the advancement of Our Revenue than the disposing of such Lands as are our property upon Reasonable Terms, and the establishing a regular and proper method of proceeding with respect to the passing of Grants of such Land; It is therefore Our Will and Pleasure that all and every person and persons who shall apply to you for any Grant or Grants of Land shall previous to their obtaining the same make it appear before You in Council, that they are in a Condition to Cultivate and Improve the same by settling thereon in proportion to the Quantity of Acres desired, a sufficient Number of white persons and

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Negroes; and in Case You shall upon a Consideration of the Circumstances of the person or persons applying for such Grants, think it adviseable to pass the same, in such Case You are to cause a Warrant to be drawn up, directed to the Surveyor General or other proper Officers, empowering him or them to make a faithful and Exact Survey of the Lands so petitioned for, and to return the said Warrant within six Months at furthest from the Date thereof, with a plot or Description of the Lands so Surveyed thereunto annexed, provided that You do take Care, that before any such Warrant is Issued as aforesaid, a Docquet thereof be entered in the Auditors and Registers Office, and when the Warrant shall be returned by the said Surveyor or other proper Officer, the Grant shall be made out in due form, and the Terms and Conditions required by these Our Instructions be particularly and Expressly mentioned in the respective Grants: And it is Our Will and pleasure, that the said Grants shall be registered within Six Months from the Date thereof in the Registers Office there, and Docquet thereof be also entred in Our Auditors Office there, in case such Establishment shall take place in Our said Province, or that in Default thereof such Grant shall be Void, Copies of all which Entries shall be returned regularly by the proper Officer to Our Commissioners of Our Treasury and to Our Commissioners for Trade and plantations within six Months from Date thereof.

49. And Whereas great Inconveniences have arisen in many of Our Colonys in America from the granting excessive Quantities of Land to particular persons who have never cultivated or Settled it, and have thereby Prevented others more Industrious from Improving the same; in Order therefore to prevent the like Inconveniences for the future, You are to take especial Care, that in all Grants to be made by You, by and with the Advice and Consent of Our Council, to persons applying for the same, the Quantity be in proportion to their Ability to Cultivate: And You are hereby directed to observe the following Directions and Regulations in all Grants to be made by You Viz:

That One hundred Acres of Land be granted to every person being Master or Mistress of a Family for himself or herself and fifty Acres for every White or Black Man Woman or Child of which such persons Family shall consist, at the Actual time of making the Grant, and in Case any Person applying to You for Grants of Land shall be desirous of taking up a larger Quantity than the Actual Number of Persons in his or her Family would Intitle such persons to take up, It is Our Will and Pleasure and You are hereby allowed and permitted to grant unto every such person or persons such further Quantity of Land as they may desire, not exceeding one thousand Acres over and above what they are entitled to, by the number of persons in their respective Famili s, provided it shall appear to you that they are in a Condition and Intention to Cultivate the same; and provided also that they do pay to the Receiver of Our Quit rents or to such other Officer as shall be appointed to receive the same the Sum of five Shillings only for every fifty Acres so Granted on the Day of the Date of the Grant.—

That all Grantees be Subject to the payment of two Shillings Sterling for every hundred Acres to commence at the expiration of two Years from the Date of such Grant and to be paid Yearly and every Year, or in Default of such payment the Grant to be void—

That every Grantee upon giving proof that he or she has fulfilled the Terms and Conditions of his or her Grant, shall be Entitled to another Grant in the proportion and upon the Conditions above mentioned.—

That for every fifty Acres of Land accounted plantable each patentee shall be Obliged within three Years after the Date of his patent to clear and Work three Acres at the least in that part of his Tract which he shall Judge most Convenient and Advantageous, or else to clear and drain three Acres of Swampy or sunken Grounds or drain three Acres of Marsh if any such be within the Bounds of His Grant—

That for every fifty Acres of Land accounted Barren every patentee shall be obliged to put and keep on his Land within three years after the Date of his Grant three neat Cattle which number shall be obliged to continue on his Land until three Acres for every fifty be fully cleared and Improved

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That if any person shall take up a tract of Land wherein there shall be no part fit for present Cultivation without manuring and improving the same every such Grantee shall be obliged within three years from the Date of his Grant, to Erect on some part of his Land one Good Dwelling House to contain at least twenty feet in length and Sixteen Feet in Breadth and also to put on his Land the like Number of three neat Cattle for every fifty Acres—

That if any person who shall take up any Stony or Rocky Grounds not for planting or pasture shall, within three years after the passing of his Grant begin to Employ thereon, and so continue to work for three years then next ensuing in Digging any Stone Quarry or other Mine one good able Hand for every hundred Acres of such Tract, it shall be accounted a sufficient Cultivation and Improvement.

That every three Acres which shall be Cleared and Worked as aforesaid, and every three Acres which shall be Cleared and Drained as aforesaid, shall be accounted a sufficient Seating, plantation, Cultivation and Improvement to save for ever from Forfeiture fifty Acres of Land in any part of the Tract contained within the same patent; and the patentee shall be at Liberty to withdraw his Stock, or to forbear working in any Quarry or mine, in proportion to such Cultivation and Improvement, as shall be made upon the Swamps, sunken Grounds and Marshes which shall be Included in the same patent—

That when any person who shall hereafter take up and patent any Lands, shall have seated planted and Cultivated, or Improved the said Land or any part of it according to the Directions and Conditions above mentioned such patentee may make proof of such Seating planting Cultivation and Improvement in the General Court, or in the Court of the County, District or precinct where such Lands shall lie, and have such proof certified to the Registers Office and there entered with the Record of the said patent, a Copy of which shall be admitted on any Trial to prove the Seating and planting of such Land.

And Lastly to ascertain the true Quantity of Plantable and Barren Land contained in each Grant hereafter to be made within Our said province You are to take especial Care that in all Surveys hereafter to be made every Surveyor be required and enjoyned to take particular Notice according to the best of his Judgment and understanding how much of the Land so Surveyed is plantable and how much of it is Barren and unfit for Cultivation, and according to Insert in the Survey and plot to him to be returned into the Registers Office the true Quantity of each kind of Land.

50. And Whereas it hath been represented to Us that the Governors of several of Our Colonies in America have Granted Lands away close to the Forts belonging to Us by which means the Garrisons of such Forts have been obliged to pay the proprietors of those Lands extravagant prices for Wood cut for a necessary supply of Fuel, and thereby a great and Unreasonable Expense has been brought upon the Military Contingencies It is Our Express Will and Pleasure that You do take Especial Care, that in all Warrants for Surveying of Lands adjacent or Contiguous to a Fort or Fortification, whether such Warrant be Granted upon an Original Petition to you in Council, or upon Our Order in Our privy Council there be an Express Direction to the Surveyor that he do reserve to Us Our Heirs and Successors for the Use of the Fort, near to which the Lands shall lye such a part of the Land petitioned for (being Woodland) and in such a situation as the Commander in Chief of the said Fort (with whom he is to be required to Consult and Advise in all such Cases) shall Judge Convenient and sufficient for a permanent and Certain Supply of Fuel for such a Garrison as the said Fort may be able to Contain. And it is Our further pleasure, that a regular plot of such reserved Land, describing the Bounds, expressing the Quantity of Acres, and properly signed and attested by such Surveyor, be delivered to the Commanding Officer of each Fort, to be there publickly hung up and a Duplicate thereof also Recorded in the Secretary's Office or other proper Office of Record in Our province under Your Government; and as we judge the due Execution of this Our Order to be essential to Our Service, You are hereby required to take Care, that the Regulations above prescribed be duly entered upon the Council Books of Our said Province, as a standing Order to all persons, who may be Intrusted with the powers to which they referr—

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51. And it is Our further Will and Pleasure that in all Grants of Lands to be made by You as aforesaid, regard be had to the profitable and unprofitable Acres so that each Grantee may have a proportionable Number of One Sort and the other; as likewise that the Breadth of each Tract of Land to be hereafter Granted be one third of the Length of such Tract, and that the Length of each Tract do not Extend along the Banks of any River but into the Main Land that thereby the said Grantees may have each a Convenient Share of what accommodation the said River may Afford for Navigation or otherwise—

52. And Whereas it hath been represented to Us, that many Parts of the Province under your Government are particularly adapted to the Growth and Culture of Hemp and Flax, It is therefore Our Will and pleasure that in all Surveys of Land for Settlement, the Surveyor be directed to Report whether there is any or what Quantity of Lands contained within such Survey, fit for the production of Hemp and Flax and you are to take particular Care to insert a Clause in every Grant of Land where any part thereof is fit for such production, obliging the Grantee annually to sow a proportionable part of his Grant with Hemp or Flax Seed—

53. And Whereas it hath been further represented to Us that a great part of the Country in the Neighbourhood of Lake Champlain, and between that Lake and the River S^t Lawrence, abounds with Woods, producing Trees fit for masting for Our Royal Navy, and other Useful and necessary Timber for naval Construction; You are therefore expressly directed and required to cause such parts of the said Country or any other within Your Government, that shall appear upon a Survey to abound with such Trees and shall lye convenient for Water Carriage, to be reserved to Us, and to Use Your best Endeavour to prevent any Waste being Committed upon the said Tracts by punishing in due Course of Law any persons who shall Cut Down or Destroy any Trees growing thereon, and You are to Consider and advise with Our Council, whether some Regulation that shall prevent any Saw Mills whatever from being Erected within your Government without a Licence from you or the Commander in Chief of Our said Province for the time being, may not be a means of preventing all Waste and Destruction in such Tracts of Land as shall be reserved to Us for the purposes aforesaid—

54. And Whereas it appears from the Representations of Our late Governor of the District of Trois Rivieres that the Iron Works at S^t Maurice in that District are of great Consequence to Our Service; It is therefore Our Will and Pleasure that no part of the Lands, upon which the said Iron Works were carried on, or from which the Ore Used in such Works was procured, which shall appear to be necessary and Convenient for that Establishment, either in respect to a free passage to the River S^t Lawrence, or for producing a necessary Supply of Wood, Corn and Hay, or for pasture for Cattle, be Granted to any private person whatever, and also that as large a District of Land, as conveniently may be adjacent to and lying round the said Iron Works, over and above what may be necessary for the above purposes be reserved for Our Use to be disposed of in such manner as We shall hereafter direct and appoint—

55. And Whereas it is necessary that all Persons who may be desirous of Settling in Our said province, should be fully Informed of the Terms and Conditions upon which Lands will be granted in Our said province, You are therefore as soon as possible to cause a publication to be made by proclamation or otherwise as you in Your Discretion shall think most adviseable of all and every the aforegoing Terms, Conditions and Regulations of every kind respecting the Grants of Lands, in which proclamation it may be Expedient to add some short Description of the natural Advantages of the Soil and Climate, and its peculiar Advantages for Trade and Navigation; and you are to take such Steps as You shall think proper for the publishing such proclamation in all the Colonies in North America—

56. And it is Our further Will and Pleasure that all the foregoing Instructions to You as well as any which You may hereafter receive relative to the form and method of passing Grants of Lands, and the Terms and Conditions to be annexed to such Grants be entered upon Record with the Grants themselves for the Information and Satisfaction of all parties whatever that may be concerned therein.

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57. And it is Our further Will and Pleasure that You do consider of a proper and Effectual Method of Collecting receiving and accounting for Our Quit Rents whereby all Frauds Concealment Irregularity or Neglect therein may be prevented and whereby the Receipt thereof may be Effectually chequed and Controlled, and if it shall appear necessary to pass An Act for the more effectually ascertaining and the more speedily and regularly collecting Our Quit Rents, You are to prepare the Heads of such a Bill, as you shall think may most Effectually conduce to the procuring the good Ends proposed, and to Transmit the same to Us by one of Our principal Secretaries of State, for Our further Directions therein, and You are also to Transmit a Duplicate thereof to Our Commissioners for Trade and plantations for their Information—

58. And it is Our further Will and Pleasure that the Surveyor General or such other person or persons as you shall think proper to Appoint, do, once in every Year or oftener, as Occasion shall require, inspect the State of all Grants of Land made by you, and make Report thereof to You in Writing, Specifying whether the Conditions therein contained have or have not been complied with, or what Progress has been made towards fulfilling the same; and you are annually to transmit Copies of such Reports to Us by One of Our principal Secretaries of State, and Duplicates thereof to Our Commissioners for Trade and Plantations for their Information—

59. And Whereas Our Province of Quebec is in part Inhabited and Possessed by several Nations and Tribes of Indians, with whom it is both necessary and Expedient to cultivate and maintain a Strict Friendship and good Correspondence, so that they may be Induced by Degrees not only to be good Neighbours to Our Subjects, but likewise to be good Subjects to Us, You are therefore as soon as You conveniently can, to appoint a proper person or persons to Assemble and treat with the said Indians, promising and Assuring them of Protection and Friendship on our part and delivering them such presents as shall be sent to You for that purpose—

60. And You are to Inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their Lives, and the Rules and Constitutions by which they are governed and regulated, and You are upon no Account to molest or disturb them in the possession of the said province as they at present Occupy, or Possess, but to Use the best means You can for Conciliating their Affections and Uniting them to Our Government, reporting to Us, by One of Our principal Secretaries of State, and to Our Commissioners for Trade and Plantations whatever Information You can collect with respect to these people, and the whole of Your proceedings with them.—

61. Whereas We have by Our proclamation dated the 7th Day of October in the 3d Year of Our Reign, strictly forbid, on pain of Displeasure, all our Subjects from making any purchases or Settlements whatever, or taking possession of any of the Lands reserved to the several Nations of Indians, with whom we are connected, and who live under our protection without our especial leave for that purpose first obtained It is Our Express Will and Pleasure that you take the most Effectual Care, that Our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon Your Government be carried on in the manner and under the Regulations prescribed in Our said proclamation—

62. You are to use Your best Endeavours in Improving the Trade of those parts by settling such Orders and Regulations therein, with the Advice of our said Council as may be most acceptable to the Generality of the Inhabitants. And it is Our Express Will and Pleasure, that You do not upon any pretence Whatever, upon pain of Our Highest Displeasure, give Your Assent to any Law or Laws for setting up any Manufactures and carrying on any Trades which are hurtful and prejudicial to this Kingdom, and that You do Use Your Utmost Endeavours to discourage, discountenance and restrain any Attempts which may be made to set up such Manufactures or establish any such Trades—

63. And it is Our Will and Pleasure, that You do not dispose of any Forfeitures or Escheats to any Person, until the Sheriff or other proper Officer have made Enquiry by a Jury upon their Oaths, into the true Value thereof, nor until You have transmitted

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to Our Commissioners of Our Treasury a particular Account of such Forfeitures and Escheats, and the Value thereof. And You are also to take Care that the produce of such Forfeitures and Escheats, in Case We think proper to give You Directions to dispose of the same, be duly paid to Our Treasurer or Receiver General of Our said province, and a full Account transmitted to Our Commissioners of Our Treasury, or Our High High Treasurer for the Time being with the Names of the persons to whom disposed.

64. And Whereas Commissions have been Granted unto several persons in Our Respective Plantations in America for the Trying of pirates in those parts pursuant to the Acts for the more Effectual Suppression of Piracy. And by a Commission already sent to Our province of New York Our Governor there is Impowered together with others therein mentioned to proceed accordingly in Referrence to Our said Province; Our Will and pleasure is that you do Use Your best Endeavours to apprehend all persons whatever who may have been guilty of Piracy within Your Government or who having Committed such Crimes at other places may come within your Jurisdiction; and until we shall think proper to direct the like Commission to be Established for Our Government of Quebec, You are to send such pirates with what proofs of their Guilt You can procure or Collect, to Our Governor of New York to be tryed and punished under the Authority of the Commission established for those parts—

65. And Whereas You will Receive from our Commissioners for Executing the Office of High Admiral of Great Britain, and of Our Plantations, a Commission constituting You Vice Admiral of Our said Province, You are hereby required and Directed Carefully to put in Execution the several powers thereby Granted you—

66. Whereas great Inconveniences have happened heretofore by Merchant Ships and other Vessels in the Plantations, wearing the Colours born by Our Ships of War under pretence of Commissions granted to them by the Governors of the said plantations, and by trading under those Colours not only amongst Our Own Subjects, but also those of other princes and States, and committing divers Irregularities, they may very much dishonor Our Service; For preventing thereof You are to oblige the Commanders of all such Ships, to which You shall grant Commissions, to wear no other Colours than such as are described in an Order of Council of the 7th of January 1730 in relation to Colours to be Worne by all Ships and Vessels, Except Our Ships of War.

67. And Whereas there have been some great Irregularities in the manner of Granting Commissions in the plantations to private Ships of War, You are to govern yourself, whenever there shall be Occasion according to the Commission and Instructions granted in this Kingdom but You are not to grant Commissions of Marque or Reprisal against any prince or State or their Subjects in Amity with Us to any person whatsoever without Our Especial Command.

68. Whereas We have been Informed that during the time of War Our Enemys have frequently got Intelligence of the State of our plantations by Letters from private persons to their Correspondence in Great Britain, taken on Board Ships coming from the plantations, which has been of Dangerous Consequence; Our Will and Pleasure therefore is, that You signify to all Merchants, Planters and others, that they be very Cautious in time of War whenever that shall happen in giving any Account by the Letters of the publick State and Condition of Our province under your Government; And You are further to give directions to all masters of Ships or other persons to whom you may Entrust Your Letters, that they put such Letters into a Bag, with a Sufficient Weight to sink the same Immediately in case of Imminent Danger from the Enemy, and You are also to let the Merchants and Planters know, how greatly it is for their Interest that their Letters should not fall into the Hands of the Enemy; and therefore that they should give like Orders to Masters of Ships in Relation to their Letters; and You are further to advise all Masters of Ships that they do sink all Letters in Case of Danger in the manner before mentioned—

69.—And Whereas the Merchants and Planters in Our plantations in America have, in time of War, Corresponded and traded with our Enemies, and carried

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Intelligence to them, to the great Prejudice and Hazard of Our said plantations; You are therefore by all possible Methods, to endeavour to hinder such Trade and Correspondence in time of War—

70. And You are to Report to Us, by one of Our principal Secretaries of State; What is the Nature of the Soil and Climate of the province under your Government, if it differs in those Circumstances from Our other Northern Colonies, in what that Difference consists, and what beneficial Articles of Commerce the different parts of it are capable of producing?—

What Rivers there are, and of what extent and convenience to the planters?

What are the principal Harbours, how situated, of what extent, and what is the Depth of Water and Nature of the Anchorage in each of them?

What Quantity of Land is now under actual Improvement and Settlement? what are the chief Articles of produce and Culture, the annual amount of the Quantity of each, and upon what Terms and Conditions the Inhabitants hold their Lands, either of Cultivation Rent, or personal Service?—

What is the Quantity, Nature and property of the Land uncultivated, how much of it is capable of Culture, and what part thereof is private property?—

What is the number of Inhabitants, Whites and Blacks distinguishing each; what number of the former is capable of bearing Arms, and what number of the latter is annually necessary to be supplied in proportion to the Land Cultivated.

What was the nature, form and Constitution of the Civil Government; what Judicatures were there Established, and under the Regulations did the french Inhabitants carry on their Commerce; and You are to transmit a Duplicate of such Account to Our Commissioners for Trade and plantations for their Information.

71. You are from time to time to send unto Us by One of Our principal Secretaries of State as aforesaid; An account of the Increase and Decrease of the Inhabitants, Whites and Blacks; And also an Account of all persons, Born, Christened and Buried and You are to Transmit duplicates of such Accounts to Our Commissioners for Trade and plantations for their Information.

72.—Whereas it is absolutely necessary that We be exactly Informed of the State of Defence of all our plantations in America, as well in Relation to the Stores of War that are in each plantation, as to the Forts and Fortifications there, and what more may be necessary to be built for the Defence and Security of the same, You are as soon as possible to prepare an Account thereof with Relation to Our said province in the most particular manner, and You are therein to Express the present State of the Arms, Ammunition, and other Stores of War, belonging to the said Province, either in publick Magazines, or in the Hands of private persons; together with the State of all places, either already forfeited or that you Judge Necessary to be forfeited for the Security of Our said province; and You are to transmit the said Accounts to Us by One of Our Principal Secretaries of State, and also Duplicates thereof to Our Commissioners for Trade and Plantations, for their Information, and also a Duplicate thereof to Our Master General or Principal Officers of Our Ordnance; which Accounts are to Express the particulars of Ordnance, Carriages, Balls, Powder, and other Sorts of Arms, and Ammunition in Our publick Stores, and so from time to time of what shall be sent to you, or bought with the publick Money, and to Specify the time of the disposal and the Occasion thereof; and You are half yearly to transmit a General Account of the State of the Fortifications and Warlike Stores, specified in the manner above mentioned—

73. You are from time to time to give an Account what Strength your Neighbours have by Sea and Land, and of the Condition of their plantations, and what Correspondence You keep with them—

74. And in Case of any Distress of any other of Our plantations, You shall, upon application of the respective Governors thereof unto you, assist them with what aid the Condition and Safety of Our province under Your Government can spare.

75. If any thing shall happen which may be of advantage or Security to Our province under Your Government, which is not herein, or by Your Commission provided for, We do hereby allow unto You with the Advice and Consent of Our Council,

to take Order for the present therein, giving unto Us by One of Our principal Secretaries of State Speedy Notice thereof, that You may receive Our Ratification, if We shall approve the same; Provided always that You do not, by Colour of any power or Authority hereby given You, Commence or Declare War without Our Knowledge and particular Commands therein; and you are also to Transmit duplicate of such Notice, as aforesaid, to Our Commissioners for Trade and plantations for their Information—

76. And Whereas We have by the first Article of these Our Instructions to You directed and Appointed, that Your Chief Residence shall be at Quebec, You are nevertheless frequently to Visit the other parts of Your Government, in Order to Inspect the Management of all publick Affairs and thereby the better to take care, that the Government be so administered, that no disorderly practice may grow up contrary to Our Service and the welfare of Our Subjects—

77.—And Whereas great Prejudice may happen to Our service, and the security of the Province by Your absence from those parts, You are not upon any pretence whatsoever to come into Europe, without having first obtained leave for so doing from Us under Our Sign Manual and Signet or by Our Order in Our privy Council; Yet nevertheless in Case of Sickness, You may go to South Carolina, or any other of Our Southern plantations, and there Stay for such Space as the Recovery of Your Health may absolutely require—

78. And Whereas We have thought fit by Our Commission to direct, that in Case of Your Death or absence from Our said province, and in Case there be at that time no person within Our said province Commissionated or Appointed by Us to be Our Lieutenant Governor or Coṁander in Chief that the Eldest Councillor, who shall be at the time of Your Death or absence residing within Our said Province under Your Government, shall take upon him the Administration of Government, and execute our said Commission and Instructions, and the several powers and Authorities therein directed—It is nevertheless Our Will and Pleasure that in such Case the said President shall forbear to pass any Act or Acts but what are immediately necessary for the peace and Welfare of the said Province, without our particular Orders for that purpose, and that he shall not remove or Suspend any of the Members of Our Council, nor any Judges, Justices of the peace, or other Officers Civil or Military, without the advice and consent of at least Seven of the Members of Our said Council, nor even then without good and sufficient Reasons for the same which the said President is by the first Opportunity to transmit Signed by himself and the rest of Our said Council, to Us by One of Our principal Secretaries of State, and he is also to transmit a Duplicate of such Reasons to Our Commissioners for Trade and plantations for their Information—

79 And Whereas We are willing in the best manner to provide for the Support of the Government of Our Province aforesaid, of which You are Governor, by setting apart sufficient allowances to such as shall be Our Governor or Commander in Chief residing for the time being withih the same, Our Will and Pleasure is, that when it shall happen, that You shall be Absent from Our said Province, One full Moiety of the Salary and all perquisites and Emoluments whatsoever, which would otherwise become due unto you, shall during the time of Your absence, be paid and satisfied unto Our Commander in Chief, who shall be resident within our said province for the time being, which we do hereby Order and allot to him for his Maintenance and for the better Support of the Dignity of that Our Government.

80. And You are upon all Occasions to send unto Us by One of Our principal Secretaries of State a particular Account of all Your proceedings, and of the Condition of for Affairs within Your Government, and also a Duplicate thereof to Our Coṁissioners Trade and plantations, for their Information, except in cases of a Secret Nature—

MEMORANDUM—The Instructions relative to the Acts of Trade and Navigation for Gov^r Carleton are the same with those given to Gov^r Shirley for the Bahama Islands—

Plantation Book, 1767–1771 Privy C. O.

Quebec. General Instructions, Gov. Carleton, approved by His Majesty in Council the day of 1768.

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HILLSBOROUGH TO CARLETON.[1]

WHITEHALL 12th Octr 1768.

Govr CARLETON.

SIR,

* * * * * *

The proper support and encouragement to be given to the Church of England as well as the necessary toleration to be allowed to His Majesty's new subjects in the exercise of the Roman Catholic Religion, will be matters of serious attention in the consideration of the general regulations for the Colony of Quebec, which important business is, I trust, now drawing near to some conclusion.

In the mean time His Majesty does not doubt that you will give all necessary protection to the new subjects in the exercise of their religion; and is pleased to recommend it to you particularly to countenance the established Church, and to take care that the Offices of it are administered with a decency corresponding to the purity of its principles.

* * * * * *

I am &c.

HILLSBOROUGH

CARLETON TO HILLSBOROUGH.[2]

Secret Correspondence QUEBEC Novr 20th 1768.

MY LORD Since my arrival in this province, I have not been able to make any discovery, that induces me to give credit to the paper of intelligence inclosed in your Lordships letter of the 14th of May last[3]; nor do I think it probable the Chiefs of their own free motion in time of peace, dare assemble in numbers, consult, and resolve on a revolt; or that an assembly of military men should be so ignorant, as to fancy they could defend themselves by a few fireships only, against any future attack from Great-Britain, after their experience in fifty nine. Notwithstanding this, and their decent and respectful obedience to the Kings government hitherto, I have not the least doubt of their secret attachments to france, and think this will continue as long as they are excluded from all employments under the Brittish Government, and are certain of being reinstated, at least in their former Commissions under that of france, by which chiefly they supported themselves, and families.

When I reflect that france naturally, has the affections of all the people; that, to make no mention of fees of Office & the vexations of the Law, we have done nothing to Gain one man in the province, by making it his private interest to remain the King's Subject; and that the interests of many would be greatly promoted by a revolution; I own, my not having discovered a treasonable correspondence, never was proof sufficient to convince me, it did not exist in some degree, but I am inclined to think, if such a message has been sent, very few were entrusted with the secret: perhaps the Court of france, informed a year past by Monsr de Chatelet, that the King purposed raisign a Regiment of His new subjects, caused this piece of intelligence to be communicated, to create a jealousy of the Canadians, and prevent a measure that might fix their attachments to the Brittish government, and probably, of those Savages who have always acted with them: however that be, on receiving this news from france last Spring, most of the Gentlemen in the province applied to me, and begged to be admitted into the

[1] Canadian Archives, Q 5-2, p. 756. The portions omitted refer to the appointment of two ministers of the Church of England to the parishes of Quebec and Three Rivers, and the objections of Carleton to one of them, formerly a French Jesuit.

[2] Canadian Archives, Q 5-2, p. 890.

[3] This letter does not appear among the State Papers in the Canadian Archives.

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King's Service, assuring me they would take every opportunity to testify their zeal, and gratitude for so great a mark of favour & tenderness, extended, not only to them, but to their posterity.

When I consider further; that the Kings dominion here is maintained here but by a few troops, necessarily dispersed, without a place of security for their magazines, for their Arms, or for themselves; amidst a numerous military people, the Gentlemen all Officers of experience, poor, without hopes that they or their descendants will be admitted into the service of their present Sovereign, I can have no doubt that france, as soon as determined to begin a war will attempt to regain Canada, should it be intended only to make a diversion, while it may reasonably be undertaken with little hazard, should it fail, and where so much may be gained, should it succeed. But should france begin a War in hopes the Brittish-colonies will push matters to extremities, and she adopts the project of supporting them in their independent notions, Canada, probably, will then become the Principal scene, where the fate of America may be determined. Affairs in this situation, Canada in the hands of france would no longer present itself as an enemy to the Brittish colonies, but as an ally, a friend, and a protector of their Independency. Your Lordship must immediately perceive the many disadvantages Great Britain would labour under in a war of this nature; and on the other hand, how greatly Canada might for ever Support the Brittish interests on this Continent, for it is not united in any common principle, interest, or wish with the other Provinces, in opposition to the Supreme-seat of Government, was the King's dominion over it only strengthened by a Cittadel, which a few national troops might secure, and the natives attached, by making it their interest to remain His Subjects.

My letters to the Earl of Shelburne No— 20, 23, 24, 25, & 26,[1] contain more fully my humble opinion of the measures necessary to obtain this desirable End, convinced, that the affections of the Canadians, or a great force, is necessary to secure this province in time of War, or, at least, till the marine of france is thoroughly subdued: to those letters I refer your Lordship for further particulars, and am, with great regard, and esteem,

Your Lordships most Obedient & most humble Serv^t

GUY CARLETON

To the Earl of Hillsborough

A DRAUGHT of An Intended Report of the Honourable the Governor in Chief and the Council of the Province of Quebec to the King's most Excellent Majesty in his Privy Council; concerning The State of the Laws and the Administration of Justice in that Province.[2]

May it please your Majesty,

In humble obedience to your Majesty's order in council, of the 28th day of August 1767,[3] wherein your Majesty is pleased to order that we should report to your Majesty,

First. Whether any, and what, defects are now subsisting in the present state of Judicature in this your Majesty's province of Quebec:

And Secondly. Whether the Canadians are, or think themselves, aggrieved according to the present administration of justice: wherein, and in what respects; together with our opinions of any alterations or amendments that we can propose for the general benefit of the said province; and that such alterations and amendments, for the clearer apprehension thereof, be trans-

[1] For Nos. 20, 23 & 26, see pp. 196, 201, 205. No. 24 is 'Carleton to Shelburne' Jan. 18th, 1768, enclosing Minutes of Council from Oct. 1st to Dec. 31st, 1767. See Q 5-1, p. 351. No. 25 is 'Carleton to Shelburne,' Jan. 19th, 1768, enclosing petition of merchants with reference to bankruptcy law. See Q 5-1, p. 365.

[2] From *A Collection of Several Commissions, and other Public Instruments, Proceeding from his Majesty's Royal Authority, Relating to the Province of Quebec.* Collected by Francis Maseres, Attorney General of the Province. London; 1772, p. 1. Given also in Canadian Archives, Q 56-2.

[3] See p. 199.

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mitted to your Majesty in the form of ordinances, but not passed as such; and that such report be returned, signed by your Majesty's governor, or his *locum tenens*, the chief justice, and attorney general of the said province; but that, if they should not concur, the person or persons differing in opinion should be required to report the difference of his opinions, together with his reasons for such difference of opinion, fully and at large:

We lay before your Majesty the following view of the laws and customs which at present prevail in this province, and of the rules of decision observed by your Majesty's courts of judicature in the administration of justice, together with such observations on these heads as the experience we have had in our respective offices since we have had the honour to serve your Majesty in this province has enabled us to make.

The laws of England are generally thought to be in force in this province.

In the first place, we beg leave to observe to your Majesty, that the laws of England are generally supposed to be in force in this province. All criminal proceedings have been carried on according to these laws: and in civil matters no other laws are cited, or appealed to, or allowed to be of any weight in the courts of justice; though in one or two causes certain customs that prevailed here in the time of the French government have been admitted as the grounds of the decisions, because the causes of action in those litigations had arisen either in the time of the French government, or during your Majesty's government of this province by your military commanders, during which period the ancient laws and usages of the country were supposed to be in force. But since the establishment of civil government your Majesty's chief justice of the province has acted by virtue of a commission[1] that commands him to decide all matters that come before him *according to the laws and customs of that part of your Majesty's kingdom of Great Britain called England, and the laws, ordinances, rules, and regulations of your Majesty's province of Quebec hereafter in that behalf to be ordained and made:* so that he is not at liberty to allow of any other laws or customs but those of England, unless they are expressly introduced or revived by some of the ordinances of the province made since the establishment of the civil government. And further, besides this commission, there is an express ordinance of the province which obliges both your Majesty's chief justice and the other judges of the province to follow the same rule of judgment. This is the ordinance of the 17th of September 1764,[2] passed by the governor and council of the province upon the introduction of the civil government, to erect and constitute the courts of justice by which the said civil government was to be carried on.

The commission of the chief justice refers to them.

So does the ordinance of the 17th of September 1764.

Purport of this ordinance.

This ordinance erects, in the first place, one superior court of judicature, called the King's Bench, in which it directs that your Majesty's chief justice of the province shall preside, *with power and authority to hear and determine all criminal and civil causes, agreeable to the laws of England and to the ordinances of this province:* and, in the second place, an inferior court of judicature, called the Court of Common Pleas, with power and authority to determine all property above the value of ten pounds, with a liberty to either party to appeal to the superior court, or court of King's Bench, where the matter in contest is of the value of twenty pounds, or upwards; and directs that the judges in this court shall determine the matters before them agreeable to equity, *having regard nevertheless to the laws of England as far as the circumstances and situation of things will permit, until such time as proper ordinances for the information of the people can be established by the governour and council, agreeable to the laws of England;* and it farther directs *that the French laws and customs shall be allowed and admitted in all causes in this court between the natives of this province, where the cause of action arose before the* 1st *day of October* 1764. It then, in the third place, gives

[1] See Commission of Chief Justice Hey; p. 190.
[2] See p. 149.

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powers to justices of the peace to determine matters of property of small value in a summary way, either singly, if the matter in dispute does not exceed the value of five pounds, or in conjunction with each other in weekly and quarterly sessions, where the matter in contest is of a greater value. The words of this ordinance, by which these things are ordained, are of the tenor following :

The words of the ordinance

"Whereas it is highly expedient and necessary for the well governing of "his Majesty's good subjects of the province of Quebec, and for the speedy "and impartial distribution of justice among the same, that proper courts of "judicature, with proper powers and authorities, and under proper regula- "tions, should be established and appointed ; his excellency the governor, by "and with the advice, consent, and assistance of his Majesty's council, and "by virtue of the power and authority to him given by his Majesty's letters "patent under the great seal of Great Britain, hath thought fit to ordain "and declare, and his said excellency, by and with the advice, consent, and "assistance aforesaid, doth hereby ordain and declare ;

"That a superior court of judicature, or court of King's Bench, be estab- "lished in this province to sit and hold terms in the town of Quebec twice "in every year, viz. one to begin on the 21st day of January, called Hilary "term, the other on the 21st day of June, called Trinity term.

"In this court his Majesty's chief justice presides, with power and "authority to hear and determine all criminal and civil causes, agreeable "to the laws of England and to the ordinances of this province ; and from "this court an appeal lies to the governor and council, where the matter "in contest is above the value of three hundred pounds Sterling ; and from the "governor and council an appeal lies to the King and council, where the "matter in contest is of the value of five hundred pounds Sterling, or "upwards.

"In all trials in this court all his Majesty's subjects in this colony are to "be admitted on juries without distinction.

"And his Majesty's chief justice once in every year to hold a court of "assize and general gaol delivery, soon after Hilary term, at the towns of "Montreal and Trois-Rivieres, for the more easy and convenient distribu- "tion of justice to his Majesty's subjects in those distant parts of the pro- "vince.

"And whereas an inferior court of judicature, or court of Common Pleas, "is also thought necessary and convenient, it is further ordained and "declared, by the authority aforesaid, that an inferior court of judicature, "or court of Common Pleas, is hereby established, with power and authority "to determine all property above the value of ten pounds, with a liberty "of appeal to either party to the superior court, or court of King's Bench, "where the matter in contest is of the value of twenty pounds, and "upwards.

"All trials in this court to be by juries, if demanded by either party ; "and this court to sit and hold two terms in every year at the town of "Quebec, at the same time with the superior court, or court of King's "Bench. Where the matter in contest in this court is above the value of "three hundred pounds Sterling, either party may (if they shall think "proper) appeal to the governor and council immediately, and from the "governor and council an appeal lies to the King and council, where the "matter in contest is above the value of five hundred pounds Sterling, or "upwards.

"The judges in this court are to determine agreeable to equity, having "regard nevertheless to the laws of England, as far as the circumstances and "present situation of things will admit, until such time as proper ordinances "for the information of the people can be established by the governor and "council, agreeable to the laws of England.

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"The French laws and customs to be allowed and admitted in all causes "in this court between the natives of the province, where the cause of "action arose before the first day of October one thousand seven hundred "and sixty-four.

"The first process in this court to be an attachment against the body.

"An execution to go against the body, lands, or goods of the defendant.

"Canadian advocates, proctors, &c. may practise in this court.

"And whereas it is thought highly necessary for the ease, convenience, "and happiness of all his Majesty's loving subjects, that justices of the "peace should be appointed for the respective districts of this province, "with power of determining property of small value in a summary way, it "is therefore further ordained and declared, by the authority aforesaid, and "full power is hereby given and granted to any one of his Majesty's justices "of the peace, within their respective districts, to hear and finally deter-"mine in all causes or matters of property not exceeding the sum of five "pounds current money of Quebec; and to any two justices of the peace, "within their respective districts, to hear and finally determine in all "causes or matters of property not exceeding the sum of ten pounds said "currency; which decisions being within, and not exceeding the aforesaid "limitation, shall not be liable to an appeal; and also full power is, by the "authority aforesaid, given and granted to any three of said justices of "the peace to be a *quorum*, with power of holding quarter sessions in their "respective districts every three months, and also to hear and determine "all causes and matters of property which shall be above the sum of ten "pounds, and not exceeding thirty pounds current money of Quebec, with "liberty of appeal to either party to the superior court, or court of King's "Bench. And it is hereby ordered, that the aforesaid justices of the peace "do issue their warrants directed to the captains and other officers of the "militia in this province, to be by them executed, until the provost-"marshal, legally authorized by his Majesty, shall arive, and other inferior "officers be appointed for that purpose; all officers, civil and military, or "other his Majesty's loving subjects, are hereby commanded and required "to be aiding and assisting to the said justices and officers of militia in the "due execution of their duty. And it is further ordered and directed, by "the authority aforesaid, that two of the said justices of the peace do sit "weekly in rotation, for the better regulation of the police and other "matters and things in the towns of Quebec and Montreal, and that the "names of the justices who are to sit in each week be posted up on the "door of the Session-house by the clerk of the peace, two days before their "respective days of sitting, that all persons may know to whom to apply "for redress."

The ordinance of the 6th of November 1764.

Further, by another ordinance of your Majesty's governour and council, dated the 6th day of November 1764,[1] it is ordained, that until the 10th day of August next, that is, of August 1765, the tenures of lands, with respect to such grants as are prior to the cession of Canada to the Crown of Great Britain by the definitive treaty of peace of February 1763, and the rights of inheritance, as practised before that period, in such lands, shall remain to all intents and purposes the same, unless they shall be altered by some declared and positive law. The words of this ordinance relating to this subject are of the tenor following:

The words of this ordinance

"Whereas it appears right and necessary to quiet the minds of the people "in regard to their possessions, and to remove every doubt respecting the "same, which may any ways tend to excite and encourage vexatious law-"suits; and until a matter of so serious and complicated a nature, fraught "with many and great difficulties, can be seriously considered, and such "measures therein taken as may appear the most likely to promote the wel-

[1] See p. 166.

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"fare and prosperity of the province in general, his excellency, by and "with the advice and consent of his Majesty's council, doth hereby ordain "and declare that, until the 10th day of August next, the tenures of lands, "in respect to such grants as are prior to the cession thereof by the definitive treaty of peace signed at Paris the 10th day of February one "thousand seven hundred and sixty-three, and the rights of inheritance, as "practised before that period, in such lands or effects, of any nature "whatsoever, according to the custom of this country, shall remain to all "intents and purposes the same, unless they shall be altered by some "declared and positive law; for which purpose the present ordinance shall "serve as a guide and direction in all such matters to every court of record "in this province. Provided that nothing in this ordinance contained shall "extend, or be construed to extend, to the prejudice of the rights of the "Crown, or to debar his Majesty, his heirs or successors, from obtaining by "due course of law in any of his courts of record in this province, according to the laws of Great Britain, any lands or tenements, which at any "time hereafter may be found to be vested in his Majesty, his heirs or successors, and in the possession of any grantee or grantees, his, her, or their "assigns, or such as claim under them by virtue of any such grants as "aforesaid, or under pretence thereof, or which hereafter may be found to "have become forfeited to his Majesty by breach of all or any of the conditions in such grants respectively mentioned and contained."

Conclusion necessarily following from this ordinance in favour of the introduction of the laws of England.

By this latter ordinance we conceive that all the lands in this province, whose owners have died since the 10th day of August 1765, are meant to be subjected to the English law of inheritance, and to the English custom of dower, and to the English rules of forfeiture to your Majesty for high treason, or escheat to your Majesty, or to such other lord of whom they are holden, for felony or defect of heirs, and to all the other rules of the English law relating to land-property, even though the said lands had been originally granted before the signing of the definitive treaty of peace; and that all lands granted since the said peace were already, at the time of making the said ordinance, subject to the said English rules and customs, and were so to continue.

By these two ordinances, which have been transmitted to your Majesty and never disallowed, and are therefore supposed to have received the sanction of your Majesty's royal approbation, the Canadian laws and customs have been generally supposed to be abolished, and the English laws and customs to have been introduced in their stead, and the judges of your Majesty's courts of judicature in this province have conceived themselves to be in conscience bound to administer justice according to the laws of England.

Other public instruments which have tended to produce the same effect.

Besides these two ordinances there are several other public instruments and acts of government by which the laws of England are supposed to have been introduced into this province. Some of these instruments are acts of parliament, which introduce those particular parts of the laws of England, to which they relate, into this province; and others of them are instruments of a high and important nature, that bear the sanction of your Majesty's royal authority, by which it is generally understood to have been your royal pleasure to abolish the former laws and customs of this province, and for the sake of governing your new Canadian subjects in a milder and more indulgent manner than they had heretofore been used to, and associating and connecting them with the greater part of your ancient and natural-born subjects of Great Britain by the strong tie of an union and communion of laws, to introduce the laws of England in their stead. These acts of parliament and other instruments of government are as follows;

Acts of Parliament.

The acts of parliament that relate to this province are of two kinds; some of them are prior to the conquest of this province by your Majesty's arms in the year 1760, but extend to your Majesty's future American

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dominions, as well as those which belonged to the Crown of Great-Britain at the times of passing them, either by express words for that purpose, or by some general words that have been deemed by your Majesty's ministers and law-officers, by just construction in law, to comprehend them; and others of the said acts have been passed by your Majesty's self, by the advice and with the consent of your parliament, since the conquest and cession of this province by the last definitive treaty of peace.

Stat. I. Eliz. cap. I.

The most ancient act of parliament of the first kind that we have met with is that of the 1st of Queen Elizabeth, chap. I, by which the pretended authority of the bishop of Rome was abolished throughout all the dominions of the crown of England. The 16th section of this statute is of the following tenor: "And to the intent that all usurped and foreign power "and authority, spiritual and temporal, may forever be clearly extinguished, "and never to be used or obeyed within this realm, or any other your "Majesty's dominions or countries, may it please your Highness that it "may be further enacted, by the authority aforesaid, that no foreign prince, "person, prelate, state, or potentate, spiritual or temporal, shall, at any "time after the last day of this session of parliament, use, enjoy, or exer-"cise any manner of power, jurisdiction, superiority, authority, pre-hemi-"nence, or privilege, spiritual or ecclesiastical, within this realm, or within "any other your Majesty's dominions and countries that now be, *or here-"after shall be*; but from thenceforth the same shall be clearly abolished "out of this realm and all other your Majesty's dominions for ever; any "statute, ordinance, custom, constitutions, or any other matter or cause "whatsoever to the contrary in any wise notwithstanding."

By this section of that statute, and the express words, *any other your Majesty's dominions and countries that now be, or hereafter shall be*, we humbly apprehend that all exercise of the pope's authority, or of any ecclesiastical authority derived from him, is prohibited in this province as much as it is in England itself.

The next section of this act of parliament annexes all ecclesiastical jurisdiction to the crown of England.

The 19th section requires all bishops and other ecclesiastical persons, and all ecclesiastical officers and ministers, and all temporal judges, justices, mayors, and other lay or temporal officers and ministers, and every other person having the Queen's fee or wages, within the realm of England, or *any other her Highness's dominions*, to take the oath of supremacy.

The 24th section enacts, that every temporal person doing homage for his lands to the Queen, her heirs or successors, or that shall be received into the service of the Queen, her heirs or successors, shall take the same oath.

And the 27th section enacts, that if any person of any degree whatsoever, dwelling within the realm of England, or *in any other the Queen's realms or dominions*, shall by writing, teaching, or preaching, maintain or defend the authority, spiritual or ecclesiastical, of any foreign prince, prelate, person, state, or potentate whatsoever, heretofore claimed, used, or usurped within the realm of England, *or any dominion or country being within or under the power, dominion, or obeysance of the Queen's highness*, he shall forfeit all his goods and chattels for the first offence.

We submit it to your Majesty that this statute seems, from the whole complexion of it, as well as from the positive words, *your Majesty's dominions that hereafter shall be*, to have been considered by the legislature that passed it as an indispensable part of the general policy of the English government, and to have been intended to take place in every country that either then made or should thereafter make a part of the dominions of the crown of England.

The next statute that we have met with of this comprehensive nature is the statute of the 15th of Charles the Second, chap. 7, intitled, "An Act

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Stat 15 Car. II. cap. 7. "for the Encouragement of Trade". In the 7th section of this statute it is enacted, that after the 25th day of March 1664, no commodity of the growth or manufacture of Europe shall be imported into any land, island, plantation, colony, territory, or place to his Majesty belonging, *or which shall hereafter belong unto, or be in the possession of, his Majesty, his heirs and successors,* in Asia, Africa, or America (Tangier only excepted) but what shall be laden and shipped in England, Wales, or the town of Berwick upon Tweed, and in English-built shipping.

Stat. 7 and 8 of Will. III. cap. 22. Another statute of the same kind is the stat. 7 and 8 Will. III. chap. 22, intitled, "An Act for preventing Frauds, and regulating Abuses, in the "Plantation Trade;" by which it is enacted and ordained, that after the 25th day of March, in the year 1698, no goods or merchandizes whatsoever shall be imported into, or exported out of, any colony or plantation to his Majesty in Asia, Africa, or America belonging, or in his possession, *or which may hereafter belong unto, or be in the possession of, his Majesty, his heirs or successors,* in any ship or bottom but what is or shall be of the built of England, or of the built of Ireland, or of the built of the said colonies or plantations.

And the other acts of parliament relating to the trade of your Majesty's American colonies, though they have not such strong positive words in them as the three statutes above-mentioned, yet are generally understood to extend to this province as well as to your Majesty's more ancient American dominions; and, agreeably to this opinion, your Majesty has caused a clause to be inserted in your commission to your governour of this province,[1] directing him to take the oath required to be taken by governours of the plantations to do their utmost that the several laws relating to trade and plantations be duly observed; and this oath he hath accordingly taken. And your Majesty's commissioners of the customs have appointed a collector and comptroller of the customs, and other officers necessary for the collection of them, for this part of Quebec, in order to carry all these acts of parliament into execution.

Stat. 2, 12 Ann. cap. 18. Another statute that we understand to be in force in this province, though made before the conquest of it, and not extended by express words to the future dominions of the crown of Great Britain, is stat. 2, 12th Ann. chap. 18, intitled, "An Act for preserving all such Ships and Goods "thereof which shall happen to be forced on Shore, or stranded, upon the "coasts of this kingdom, or any other of her Majesty's dominions." This statute, and another of the 4th of Geo. I. chap. 12, for enforcing and making the former perpetual, have been declared by your Majesty's attorney and sollicitor general, in the month of June 1767, in an opinion given by them to your Majesty's lords commissioners of trade and plantations, upon a case stated to them by those lords, to extend to your Majesty's plantations in America: and no exception is made in their opinion of those of your Majesty's dominions in America which have been acquired since the passing of those statutes. And your Majesty's ministers have transmitted the said case and opinion to your Majesty's governour of this province, upon a supposition, as we apprehend, that it extends to this province as well as to all the others.

These are the acts of parliament passed before the conquest and cession of Canada that we conceive to be in force in this province by their own import and operation, and without needing any further act of government to introduce them.

Some of the acts of parliament passed by your Majesty's self since the conquest and cession of Canada relating to this province are these that follow:

Stat. 4 Geo. III. cap. 11. The first of these statutes is that of the 4th year of your Majesty's reign, chap. II, which, amongst other things, enacts, that so much of an

[1] See Instructions to Governor Murray, latter part of sec. 3, p. 133.

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act made in the 8th year of King George the First, intitled, "An Act for "giving further Encouragement to the Importation of Naval Stores, and "for other purposes therein mentioned," as relates to the importation of wood and timber, and of the goods commonly called *Lumber*, therein particularly enumerated, from any of your Majesty's British plantations or colonies in America, free from all customs and impositions whatsoever, shall be continued, beyond the times appointed in former acts, to the 29th of September in the year 1771.

In this statute the words *British plantations* are generally understood to relate to this province as well as to your Majesty's other colonies in America ; and a copy of this statute has accordingly been transmitted by the commissioners of your Majesty's customs in London to your Majesty's collector of the customs in this port.

Stat. 4 Geo. III. cap. 19.

The next act of parliament of this kind is of the same 4th year of your Majesty's reign, chap. 19. This statute expressly relates to this province by name, being intitled, " An Act for importing Salt from Europe into the " Province of Quebec in America for a limited Time." It enacts, " that it " shall be lawful for any of his Majesty's subjects to carry and import salt " from any part of Europe into the said province of Quebec in America in " British ships and vessels manned and navigated according to the act of " navigation ; *any law, statute, usage, or custom to the contrary in any wise* " *notwithstanding.*"

By these last words it seems to be supposed that all the former laws and statutes of Great Britain relating to this subject of the importation and exportation of goods and merchandize, made before the conquest of this province, are of force in this province as well as in the other British provinces in America.

Stat. 4 Geo. III. cap. 15.

Another act of parliament passed by your Majesty, and expressly relating to this province, is the statute of the same 4th year of your Majesty's reign, chap. 15, intitled, " An Act for granting certain duties in the British colo- " nies and plantations in America, and for other purposes." By this statute it is enacted, that certain rates and duties therein mentioned shall be paid upon several species of foreign goods therein enumerated that shall, after the 29th day of September 1764, be imported or brought into any colony or plantation in America, *which now is, or hereafter may be*, under the dominion of your Majesty, your heirs and successors ; and these duties are accordingly levied and paid in this province.

These are the acts of parliament, or at least some of them (for possibly there may be others which have escaped our notice) which by their own import and operation extend, as we conceive, to this province, without the help of any other instrument or act of government to introduce them ; and therefore such parts of the laws of England as are contained in these statutes are certainly in force in this province, being introduced into it by the highest authority, that of your Majesty, or your royal predecessors, in conjunction with both houses of parliament. The remaining parts of the laws of England have been introduced, or are generally understood to have been introduced, by a series of public instruments, or acts of government, founded on your Majesty's royal authority alone, without the concurrence of your parliament. These public instruments and acts of government are as follows :

Articles of capitulation granted to the Canadians by Gen. Amherst, in 1760. Article 42d.

The first of these public instruments is the capitulation granted by your Majesty's general, Sir Jeffrey Amherst, to the inhabitants of Canada at the general surrender of the whole country to your Majesty's arms in the year 1760.[1] In the 42d article of this capitulation it is desired by the French commander, on the behalf of the French and Canadian inhabitants of this

[1] See Capitulation of Montreal, p. 8.

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province, that they shall continue to be governed according to the custom of Paris and the laws and usages established in this country ; to which it is answered by your Majesty's general, that they become subjects to the King : by which it should seem, that these your Majesty's new subjects in this province were put upon the same footing as your Majesty's other subjects in other parts of your Majesty's British dominions with respect to the laws by which they were to be governed, and the power of legislation that was to be exercised over them for the time to come ; and that the continuance or abolition of their former laws and customs was to depend entirely upon the future counsels which your Majesty, in your royal wisdom, should find it expedient to pursue.

Article 27th

The 27th article of this capitulation demands, that the free exercise of the Roman Catholic religion shall subsist intire, in such manner that all the people shall continue to assemble in the churches and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly ; and then it goes on and demands, in the second place, that the people shall be obliged by the English government to pay the priests the tithes and all the taxes they were used to pay under the government of the French king. The general's answer to this article is as follows : "*Granted,* "*as to the free exercise of their religion. The obligation of paying tithes* "*to the priests will depend on the King's pleasure.*" By this answer it is evident that a bare toleration, or permission to exercise freely the Roman Catholic religion, without being molested for so doing by the execution of the penal laws of England upon that subject, is granted to the Canadians, together with a reasonable use of their churches for that purpose, though not, as we conceive, to the intire exclusion of your Majesty's Protestant subjects from making use of the same churches likewise : but a legal establishment of that religion, with a right to exact their tithes from the people as legal dues and not as voluntary contributions, is refused them, until your Majesty's pleasure shall otherwise direct, which your Majesty has not yet judged expedient to do. By this refusal all those parts of the Canadian laws and usages relating to the payment of tithes and other church dues are either abolished or suspended.

Article 31st

The 31st article of the same capitulation is as follows : "The bishop shall, "in case of need, establish new parishes, and provide for the re-building of "his cathedral and his episcopal palace ; and, in the mean time, he shall "have the liberty to dwell in the town or parishes, as he shall judge proper. "He shall be at liberty to visit his diocese with the ordinary ceremonies, "and exercise all the jurisdiction which his predecessor exercised under the "French government, save that an oath of fidelity, or a promise to do "nothing contrary to his Britannic Majesty's service, may be required of "him." To this article your Majesty's general made the following answer : "*This article is comprised under the foregoing.*" Now the foregoing, or 30th, article is directly refused ; therefore this article must be deemed to be refused likewise : and consequently by this refusal all those parts of the Canadian laws and customs that give a right to the bishop of Quebec to establish new parishes, and to provide for the re-building of his cathedral and his episcopal palace, and to visit his diocese with the ordinary ceremonies, and to exercise the jurisdiction which had been exercised by his predecessors under the French government, are abolished ; and your Majesty's ecclesiastical supremacy is vindicated and supported in a manner agreeable to that important and universal statute of the 1st of Queen Elizabeth above cited.

The definitive treaty of peace.

The next public instrument relating to the condition of this province is the definitive treaty of peace concluded at Paris on the 10th day of February 1763.[1] In the fourth article of this treaty it is declared, that your Majesty

[1] See Treaty of Paris, 1763, p. 73.

will give the most effectual orders that your new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish church, *as far as the laws of Great Britain permit.* By this reference to the laws of Great Britain it should seem to have been your Majesty's intention that those laws should be the fundamental rule of government in this province.

The King's proclamation in October 1763.

The next public instrument relating to this subject, and upon which great stress has been laid by all your Majesty's British subjects that have resorted to this province, is your Majesty's royal proclamation of the 7th of October 1763,[1] which seems to have had principally in view the profit and advantages that might accrue to your Majesty's British subjects by resorting to, or settling in, the countries that had lately been ceded to your Majesty by the definitive treaty of peace. By this very solemn and important instrument, passed under your Majesty's great seal of Great Britain, it is declared, that "your Majesty, being desirous that all your Majesty's loving subjects, "as well of your kingdoms as your colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages "that must accrue from the great and valuable acquisitions lately ceded to "your Majesty in America, to their commerce, manufactures, and navigation, has thought fit, with the advice of your privy council, to erect "four new governments to be stiled and called by the names of Quebec, "East Florida, West Florida, and Grenada; and that, as it will greatly "contribute to the speedy settling the said new governments that your "Majesty's loving subjects should be informed of your Majesty's paternal "care for the security of the liberty and properties of those who are or "shall become inhabitants thereof, your Majesty hath thought fit to publish "and declare, by that your Majesty's proclamation, that your Majesty has, "in the letters patent under the great seal of Great Britain by which the "said governments are constituted, given express power and directions "to your governours in the said new colonies, that, so soon as the state "and circumstances of the said colonies will admit thereof, they shall, with "the advice and consent of the members of your Majesty's councils, "summon and call general assemblies within the said governments, in such "manner and form as is used and directed in those colonies and provinces "in America which are under your Majesty's immediate government; and "that your Majesty has also given powers to the said governours, with "the consent of your Majesty's said councils, and the representatives so to "be summoned as aforesaid, to make, constitute, and ordain laws, statutes, "and ordinances for the public peace, welfare, and good government of your "Majesty's said colonies and of the people and inhabitants thereof, as near "as may be to the laws of England, and under such regulations and restrictions as are used in other colonies." And then it is further declared in your Majesty's said proclamation, "that in the mean time, and until such "assemblies can be called as aforesaid, all persons inhabiting in or resorting to your Majesty's said colonies *may confide in your Majesty's royal "protection for the enjoyment of the benefit of the laws of your realm of "England*; and that for that purpose your Majesty had given power under "the great seal to the governours of your Majesty's said new colonies to "erect and constitute, with the advice of your Majesty's said councils "respectively, courts of judicature and public justice within the said "colonies for the hearing and determining all causes, as well criminal as "civil, according to law and equity, and, as near as may be, agreeably to "the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to

[1] See Proclamation of 1763, p. 119

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"appeal, under the usual limitations and restrictions, to your Majesty in "your privy council."[1]

The sense in which this proclamation has been understood by the British inhabitants of this province ;

These are the words of your Majesty's said proclamation, and by them your Majesty's British subjects in this province declare that they have always understood that the laws of England have been introduced into this province, and that it was your Majesty's intention to assimilate the laws and civil government of it to those of the other American colonies and provinces which are under your Majesty's immediate government, and not to continue the municipal laws and customs by which the conquered people had heretofore been governed. And through a confidence in this proclamation, understood in this sense, they say they have quitted their native country to come and settle in this province, expecting to change only their climate by such a removal in pursuit of commercial advantages, and not to become subject to the laws of the conquered people, with which they are wholly unacquainted, and against which (though perhaps without reason) they entertain strong prejudices.

and by his Majesty's late governour and council ;

And in this sense was this proclamation understood also by your Majesty's late governour of this province and his council, who did not, in making the important ordinance above mentioned, of the 17th of September 1764, conceive themselves to be overturning all the ancient laws and customs of this country, and introducing the laws of England in their stead, but meant only to erect and constitute courts of judicature to administer a system of laws already in being, to wit, the laws of England, which they conceived to have been already introduced there by the words of your Majesty's proclamation. And in this sense likewise your Majesty's lords commissioners for trade and plantations, in the month of September 1765,[2] understood these words in your Majesty's proclamation : for in the 7th and last article of a report made by the said lords commissioners, upon certain memorials and petitions from your Majesty's subjects in this province, complaining of the ordinances and proceedings of the governour and council of this province, and of the then present establishment of courts of judicature and other civil constitutions, to the lords of the committee of your Majesty's privy council for plantation affairs, dated on the 2d day of September in the said year, the said lords commissioners of trade propose, *that in all cases where rights or claims are founded on events prior to the conquest of Canada, the several courts shall be governed in their proceedings by the French usages and customs which have heretofore prevailed in respect to such property* ; from which words it appears plainly that their lordships understood that in all cases, where rights and claims are founded on events posterior to the said conquest, the several courts of justice were to be governed by the English laws, and that their lordships were sollicitous to make an express provision, that this general rule of deciding cases according to the English laws should not be applied to such causes as were founded on events that were prior to the said conquest, in which cases it would be manifestly unjust.

and the lords commissioners for trade and plantations in September, 1765.

The more confined sense in which it was understood by his Majesty's attorney and sollicitor general, in April 1766.

We know at the same time that your Majesty's attorney and sollicitor general, in the following month of April 1766,[3] understood the words of your Majesty's royal proclamation in a more confined sense, as being introductive of only some select parts of the laws of England that were more particularly beneficial to your Majesty's English subjects, and not of the whole body of those laws. This they took to be the true import of these words in your Majesty's proclamation above-mentioned, *the enjoyment of*

[1] On comparing the passages within quotation marks with the Proclamation itself, it will be found that though the sense is preserved the letter is very considerably altered ; the address is changed from the first to the second person, and certain formal clauses are either omitted or abridged.

[2] The Report of 2nd Sept. 1765, referred to in note, p. 171; discussed also in Report of Yorke and de Grey, p. 174.

[3] See Report of Yorke and de Grey, p. 174.

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the benefit of the laws of England; and they were of opinion that the criminal laws of England were almost the only laws that came under that description; and that the laws of England relating to the descent, alienation, settlements, and incumbrances of real estates, and to the distribution of personal property in case of intestacy, were certainly not comprehended under it. Whether this or the former way of interpreting this part of your Majesty's proclamation is the true one, belongs only to your Majesty to determine, according to the ancient rule of law laid down by the celebrated lawyer *Bracton*, that "*cujus est condere, ejus est interpretari.*" All that we presume to do on this occasion is to lay before your Majesty a full and plain historical account of the several public instruments and acts of government by which the laws of England have either been introduced, or imagined to be introduced, into this province in lieu of those laws and customs which were observed in it heretofore.

The commission given to Gen. Murray in 1764 to be vice admiral of the province of Quebec.

The next public instrument of this kind is your Majesty's commission to General Murray in the year 1764, to be vice-admiral, commissary, and deputy in the office of vice-admiralty in the province of Quebec.[1] This is a judicial commission, by which the said General was impowered to enquire, by the oaths of honest and lawful men of the said province, of all and singular matters and things which of right, and by the statutes, laws, ordinances, and customs, anciently observed, were wont and ought to be enquired after; and of wreck of the sea; and of goods of felons of themselves; and likewise of goods waived, flotson, jetson, ligan, deodands, derelicts, and other casualties upon the sea, or sea coast, or fresh-water rivers, as far as the tide flows; and also of anchorage, lastage, ballast, and fish royal anciently by right or custom belonging to your Majesty; and to arrest or cause to be arrested, according to the civil and maritime laws and ancient customs of your Majesty's court of admiralty, all ships, persons, and merchandizes for causes arising within the maritime jurisdiction, and to hear and determine the said causes, with all the matters incident thereunto, according to the laws and customs aforesaid; and to fine, chastise, and imprison within any of the gaols of the province the parties that shall be found guilty, according to the rights, statutes, laws, ordinances, and customs anciently observed.

By this commission it is evident your Majesty has introduced into this province all the laws of your Majesty's English court of admiralty, in lieu of the French laws and customs by which maritime causes were decided in the time of the French government.

The commission of governour in chief of this province given to Gen. Murray in 1764, and the instructions that accompanied it.

The next public instrument relating to this subject is your Majesty's commission to General Murray in the year 1764 to be captain general and governour in chief in and over this your Majesty's province of Quebec. This commission, and the instructions that accompanied it,[1] seem every where to pre-suppose that the laws of England were in force in this province, being full of allusions and references to those laws on a variety of different subjects, and do not contain the least intimation of a saving of any part of the laws and customs that prevailed here in the time of the French government.

A probable inference from the stile and purport of the said commission and instructions.

It seems as if your Majesty had been of opinion, that by the refusal of General Amherst to grant to the Canadians the continuance of their ancient laws and usages, and by the reference made in the fourth article of the definitive treaty of peace to the laws of Great Britain, as the measure of the indulgence intended to be shewn them with respect to the exercise of their religion, sufficient notice had been given to the conquered inhabitants of this province, that it was your Majesty's pleasure that they should be governed for the future according to the laws of England, and that they,

[1] See Maseres' *Collection of Several Commissions, &c.*, p. 113.
[2] See Murray's Commission, p. 126, and Instructions, p. 132.

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after being thus apprised of your Majesty's intention, had consented to be so governed, and had testified their said consent by continuing to reside in the country and taking the oath of allegiance to your Majesty, when they might have withdrawn themselves from the province, with all their effects and the produce of the sale of their estates, within the eighteen months allowed by your Majesty for that purpose.

These are the public instruments by which it is generally supposed, by those who have perused them, that the laws of England have been introduced into this province. But as your Majesty's royal proclamation abovementioned, and your commission to General Murray to be governour in chief of this province, have never been published here in the French language, and as the provincial ordinances above-mentioned of the 17th of September and the 6th of November 1764, which have been published here in the French language, have mentioned this change in the laws in very concise and general terms, without specifying or describing any of the laws of England that were thereby introduced, the greatest part of your Majesty's new subjects remain ignorant of *the extent* of the change to this hour, and imagine that their ancient laws and usages are *in many points* still in force. They still divide their lands upon an inheritance in the same manner as before the conquest; their widows are admitted to the same shares of them as before, without any regard to the English rule of dower, which differs widely from that of the French law; and the personal estates of persons who die intestate are distributed at their decease according to the rules of the French law, which are somewhat different (though not very greatly, as we are informed) from those of the English statute of distributions; and the distributions of their personal estates have likewise been made for the most part by persons authorized thereunto in the manner that was usual under the French government, and not by receiving letters of administration from your Majesty's governour of the province in the manner directed by your Majesty's instructions. Fortunately for the peace of the province no litigations have yet arisen in any of your Majesty's courts of justice to give occasion to decisions that would make them acquainted with the change of the laws in these particulars, which would probably create a great deal of uneasiness.

Some of the ancient laws and usages are still observed by the Canadians.

Yet upon the decease of your Majesty's British subjects in this province, their relations have taken out letters of administration from the governour of the province, agreeably to your Majesty's instruction for that purpose, and, as we believe, have followed the English rule of distribution; and some few, but very few, of your Majesty's new subjects have likewise taken out letters of administration in the same manner, but have followed, as we believe, the rules of the French law, with respect to the distribution of the effects. We humbly apprehend that this diversity in the practice of your Majesty's subjects in this province may hereafter be the occasion of some confusion, though happily no bad consequences have hitherto followed from it.

A diversity in the practice of the English and Canadian inhabitants of the province, with respect to letters of administration and the distribution of the effects of persons who die intestate.

There has likewise been a diversity in the practice of your Majesty's old and new subjects with respect to the manner of conveying and mortgaging landed property. Your Majesty's British subjects have bought and sold lands and houses by instruments drawn up by English lawyers according to the English modes of conveyancing; and your Majesty's Canadian subjects have employed Canadian notaries, or scriveners, for the same purposes, who have followed the French forms of conveyancing made use of before the conquest. And it has often happened that the same lands and houses have been sold and bought and mortgaged by both French and English conveyances, as they have passed into the hands of Canadian or British proprietors. This also, we conceive, may hereafter be productive of some confusion.

Another diversity in their practice with respect to the manner of conveying and mortgaging landed property.

In some instances the Canadians have followed the laws of England.

Leases have likewise been made of lands near Quebec for twenty-one years by the society of jesuits in this province, though by the French law they can only be made for nine years. This has been done upon a supposition that the restraints upon the power of leasing lands imposed upon the owners of them by the custom of Paris, of which this is one, have no longer any legal existence. Upon the same principle many owners of seigniories, Canadians as well as Englishmen, have made grants of uncleared land upon their seigniories for higher quit-rents than they were allowed to take in the time of the French government, without regard to a rule or custom that was in force at the time of the conquest, that restrains them in this particular. And as the seigniors transgress the French laws in this respect, upon a supposition that they are abolished or superseded by the laws of England, so the freeholders, or peasants, of the province trangress them in other instances upon the same supposition. For example, there was a law made by the French king concerning the lands of this province,[1] ordaining, that no man should build a new dwelling-house in the country (that is, out of the towns and villages) without having sixty French arpents, or about fifty English acres, of land adjoining to it, and that, if, upon the death of a freeholder and the partition of his lands amongst his sons, the share of each son came to less than the said sixty arpents of land, the whole was to be sold, and the money produced by the sale divided amongst the children. This was intended to prevent the children from settling themselves in a supine and indolent manner upon their little portions of land, which were not sufficient to maintain them, and to oblige them to set about clearing new lands (of which they had a right to demand of the seigniors sufficient quantities at very easy quit-rents) by which means they would provide better for their own maintenance, and become more useful to the public. But now this law is intirely disregarded; and the children of the freeholders all over the province settle upon their little portions of their father's land, of thirty, or twenty, and sometimes only ten acres, and build little huts upon them, as if no such law had ever been known here: and when they are reminded of it by their seigniors, and exhorted to take and clear new tracts of land, they reply that they understand that by the English law every man may build a house upon his own land whenever he pleases, let the size of it be ever so small. This is an unfortunate practice, and contributes very much to the great increase of idleness, drunkenness, and beggary, which is too visible in this province.

Further, many persons who have purchased seigniories in this province, and amongst them some Canadians, have hitherto declined paying to your Majesty's receiver-general the mutation-fine, or fifth part of the purchase money, due to your Majesty upon the admission of every new seignior by the custom of Paris. The English purchasers say that this, being part of the custom of Paris, is now abolished by the introduction of the laws of England; and the Canadian seigniors say that it is not due to your Majesty till they have been regularly invested with, or put in possession of, their seigniories, with all the rights and jurisdictions thereunto belonging, by your Majesty's officers of government, and have been admitted to take the oath of fealty and perform the ceremony of homage to your Majesty for the said lands; which has not hitherto been done.

Thus it appears that in many respects the Canadians apprehend the laws of England to be in force in this province, and that they endeavour to apply them and put them in practice whenever they take them to be for their

[1] This refers to the ordinance of Louis XV, of 28th April, 1745:—"Ordonnance du Roi, portant entr'autres choses defenses aux habitans de bâtir sur les terres, à moins qu'elles ne soient d'un arpent et demi de front sur trente à quarante de profondeur." See *Edits, Ordonnances Royaux, Declarations et Arrets du Conseil d'Etat du Roi Concernant Le Canada.* Quebec, 1854, p. 585.

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advantage; though in other points, and particularly in those of inheritance and dower, and the distribution of the effects of persons who die intestate, they have universally adhered to their former laws and usages.

Criminal proceedings.

In criminal proceedings the Canadians as well as English universally suppose the laws of England to be in force. No others are ever mentioned or thought of; and the Canadians seem to be very well satisfied with them.

Civil proceedings in the court of King's Bench.

And in all civil proceedings carried on in the superiour court, or court of King's Bench, the forms of all actions, the stile of the pleadings used in them, the method of trial, and the rules of evidence are those which are prescribed by the English law, and are universally known by the Canadians to be so.

Civil proceedings in the court of Common Pleas.

In the court of Common Pleas the proceedings are drawn up in any form and stile that the parties, or their advocates, think proper, and sometimes in the French and sometimes in the English language, as the attornies who prepare them happen to be Canadians or Englishmen; and for this reason they are oftenest in the French language, most of the business in this court being managed by Canadian attornies.

Arrests of the body for debt.

Arrests of the body for debt are used in the first instance both upon suits in the court of King's Bench and suits in the court of Common Pleas, and even upon suits instituted before justices of the peace. This is a part of the English law that a good deal surprized and alarmed the Canadians upon its first introduction, as it carried an appearance of much greater severity than was practised under their own laws, which allowed of imprisonment only in criminal proceedings and in some few civil suits grounded on bills of exchange, or other instruments of a commercial nature, and then only in execution of a judgment of the court, and not in the beginning of the suit; but now they are grown accustomed to this way of proceeding, and frequently put it in practice against each other: and many persons of good sense and character, of both nations, are of opinion that, considering the great credit that has been given by persons in trade in this province, and the knavish and trickish disposition that has appeared in many of those to whom it has been given, there is no other method of proceeding by which the creditors can hope to obtain payment of their debts. This is more especially the opinion of your Majesty's British subjects that are concerned in trade in this province, many of whom objected some time since to the execution of even a part of the English law itself, to wit, that part of it which relates to commissions of bankruptcy, upon a supposition of it's being too indulgent to debtors to be useful in this province; yet other persons are of a different opinion, and think arrests of the body in the first instance an unnecessary piece of harshness in civil suits, and wish that it were restrained[1]; and to this opinion we humbly submit it to your Majesty that we are ourselves inclined.

This is, as we conceive, a faithful representation of the present state of the laws in this province, and of the public instruments and acts of government upon which it is founded. We now beg leave to lay before your Majesty certain doubts that have arisen, and may arise, concerning the validity of those instruments, and the extent of their legal operation.

Remarks on some of the foregoing instruments.

We shall say nothing concerning the validity of your Majesty's proclamation of the 7th of October 1763, and the high legislative authority which your Majesty has therein thought proper to exercise with respect to your Majesty's new colonies, though there are persons who think that this branch of your Majesty's royal prerogative ought rather to have been exercised in conjunction with both houses of parliament: but we should suppose that

[1] These objections were presented to Lt. Governor Carleton in a memorial from a number of merchants of Quebec, dated Nov. 17th, 1767. See Q 5-1, p. 248. In Jan. 1768, certain Quebec and Montreal merchants, in another petition to the Lt. Governor, represented the advantages to the credit of the colony of having the English laws relating to bankruptcy in force. See Q 5-1, p. 367.

what your Majesty has thought fit to do in this respect by the advice of your Majesty's privy council must be legal, and consequently that the operation of the words above cited from your Majesty's said proclamation is complete and incontestable so far as the true meaning of them can be ascertained. But if your Majesty in your royal wisdom should interpret them in a different sense from that in which they have been generally understood, and should declare that they were not meant to introduce the whole body of the laws of England that were not in their nature local, but only to introduce some particular parts of them that were more immediately beneficial to your Majesty's subjects, agreeably to the sense in which they were understood by your Majesty's attorney and sollicitor general in April 1766;[1] or, if your Majesty should declare that they were not meant to introduce immediately any part of the laws of England into those provinces, but only to promise and assure your Majesty's British subjects that your Majesty would, in due time and place, and by particular and express promulgations, introduce some select parts of the laws of England that were more immediately conducive to their welfare and satisfaction; in either of these cases we beg leave to submit it to your Majesty's consideration, whether the ordinances above-mentioned, of the 17th of September and the 6th of November, can be deemed of sufficient validity to introduce any part of the laws of England that were not already established by your Majesty's said proclamation. Our reasons for doubting this are as follows:

By the King's commission to the governour a certain degree of legislative authority is communicated to him, to be exercised with the advice and consent of the council and assembly;

Your Majesty by your commission to General Murray, dated the 21st day of November in the 4th year of your Majesty's reign, to be governour in chief of this province, was pleased to delegate unto him a certain limited legislative authority, to be exercised by him by and with the advice and consent of your Majesty's council of the province, and of the general assembly of the freeholders and planters in the same therein directed by your Majesty to be summoned, to wit, an authority to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of the said province, not repugnant, but, as near as may be, agreeable to the laws and statutes of your Majesty's kingdom of Great Britain. But your Majesty did not in any part of the said commission delegate either this or any other legislative power to your said governour to be exercised by him with the advice and consent of the council only, without the concurrence of an assembly. Now no assembly of the freeholders and planters has hitherto been summoned; consequently all the ordinances that have hitherto been made, so far as they have a legislative tendency, have been made without any warrant or authority from your Majesty's commission to your governour, and perhaps may, upon that account, be justly contended to be null and void.

but none to be exercised without the consent of an assembly.

If this be so, the words in the ordinance of the 17th of September 1764, which direct the court of King's Bench to determine all civil and criminal causes agreeably to the laws of England, and the other words of that ordinance, and of the ordinance of the 6th of November following, which purport to introduce the laws of England into this province, can have no legal operation to change the laws which were then subsisting in the country; and the ordinance of the 17th of September must be considered only as an executive act of government, erecting and constituting courts of judicature in the province for the administration of the laws in being, whatever those laws might be; and in this view it is certainly a legal and valid ordinance, because your Majesty had, by an express clause in your commission aforesaid, given your said governour full power to erect such courts with the advice and consent of the council only.

It is true indeed that your Majesty did give a private instruction to your late governour, purporting to communicate to him a certain degree of legis-

[1] Referring to the report of Yorke and de Grey. See p. 174.

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A very limited legislative authority is given to the governour by a private instruction, to be exercised by the advice and consent of the council only.

A doubt concerning the legality of this method of communicating a legislative authority.

lative authority to be exercised by him, by and with the consent of the council only, without any assembly; to wit, *an authority to make such rules and regulations as shall appear to be necessary for the peace, order, and good government of the said province, taking care that nothing be passed or done that shall any ways tend to affect the life, limb, or liberty of the subject, or to the imposing any duties or taxes.* But we submit it to your Majesty's consideration, whether a power of this kind can be communicated by any other instrument than letters patent under your Majesty's great seal of Great Britain, publicly read and notified to the people, to the end that the acts done by virtue of them may have a just claim to their obedience; for otherwise they may alledge that they are faithful and loyal subjects to your Majesty, and ready to pay obedience to every thing that your Majesty's self shall ordain, and likewise to every thing that shall be ordained by your Majesty's governour by virtue of powers properly communicated to him by your Majesty; that consequently they will obey him in every thing he shall do by virtue of the powers conveyed to him in your Majesty's commission which has been publicly read to them; but that in the things not warranted by the said commission, but said to be done in pursuance of certain private instructions that have not been made known to them, and which they are therefore uncertain whether he has received or not, they cannot presume that he acts by your Majesty's authority, and therefore are not bound to obey him. For this reason we humbly apprehend, that the private instruction before-mentioned cannot have legally conveyed to your Majesty's governour and council the legislative authority mentioned in it, small and narrow as it is.

The legislative authority mentioned in this instruction is too small to warrant the introduction of the laws of England.

But secondly, if a private instruction should be deemed to be a legal method of communicating a legislative authority, yet the power conveyed to the governour and council of this province by the instruction above-mentioned is much too confined an authority to warrant the general introduction of the English laws; particularly of the criminal laws, which all affect either life, or limb, or liberty; and the process of arrests of the body in civil suits for debt and trespass; and the power of committing persons to prison for contempts of court committed in the presence of your Majesty's judges; and that of granting attachments of the body for disobedience or resistance to the orders of your Majesty's superiour courts of judicature, when such acts of disobedience or resistance are committed out of court; which all immediately affect the personal liberty of your Majesty's subjects in this province.

These are the reasons upon which, we conceive, the legality of the introduction of the laws of England into this province by the provincial ordinances above-mentioned may be called in question.

But these reasons have no relation to the other high instruments of government by which these laws may be supposed to have been introduced here, namely, the articles of capitulation in 1760, the 4th article of the definitive treaty of peace, and your Majesty's royal proclamation of the 7th of October 1763. If these instruments have introduced the laws of England, they may have a legal existence in this province, notwithstanding the want of legal authority in the two provincial ordinances above-mentioned. But if your Majesty should determine that these instruments have not introduced the laws of England into this province, then, as we conceive, it will follow, that the whole body of those laws has not yet been legally introduced into it, but that those parts only of the laws of England have a legal existence in this province which are contained in the acts of parliament above-mentioned, which by their own import and operation, and without needing any new instrument of government to introduce them, extend to all your Majesty's dominions in America.

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Inconveniencies arising from the present state of the laws and administration of justice.

We will now proceed to lay before your Majesty the principal inconveniencies under which the Canadians labour from the present state of the laws and methods of administering justice in this province.

The uncertainty of the laws.

The first and greatest inconvenience arising from the present state of the laws in this province is the uncertainty of them, and the doubts that are entertained concerning the legal continuance of the ancient laws and customs that were observed here in the time of the French government. This is a cause of great uneasiness and anxiety to persons of both nations in many of the ordinary transactions of life; insomuch that it would be a great improvement of the condition of the province if either the English laws, or the old laws and customs of the country, were established by some new act of government, conceived in the most clear and positive words that can be made use of, with an express exclusion or abolition of the other laws, which may be imagined to have hitherto been in force. For by this declaration in favour of either of the systems, your Majesty's subjects would know what they had to expect for themselves and their families with respect to their inheritances, purchases, mortgages, contracts, and other civil rights and privileges from the operation of the laws; and would in consequence thereof proceed to make such regulations of their affairs by particular agreements and settlements, and by their last wills and testaments, as would protect them against the inconveniencies which they might apprehend themselves to be exposed to from such parts of the established system of laws as they did not approve. We do not mean by this to insinuate, that such an immediate establishment of one of these systems of law, to the intire and express abolition and exclusion of the other, would be the best remedy that could be applied to this evil; but only to represent to your Majesty our idea of the greatness of this inconvenience, since even such a cure would be desireable. What is the best remedy that can be applied to this evil is, as we conceive, a point of the greatest difficulty, and fit only to be determined by the wisdom of your Majesty's councils; though in obedience to your Majesty's commands, we shall humbly suggest to your Majesty, in the subsequent part of this report, some of the different methods that, as we apprehend, may be taken for this purpose, with the advantages and disadvantages with which they will be respectively attended. But before we proceed to consider this arduous subject, we beg leave to lay before your Majesty some other and much smaller inconveniencies arising from the present state of the courts in this province, together with a plan for the administration of justice for the time to come, which we humbly conceive to be likely in a great measure to remove them.

Other inconveniencies attending the present state of judicature in this province.

These inconveniencies are the expensiveness of law proceedings, which is considerably greater than in the time of the French government, the tediousness of them, and the severity of the present method of proceeding in civil suits by arresting and imprisoning the defendant's body.

The expences of law proceedings.

The expences attending law-suits arise evidently from two different sources, the fees of the officers of the courts of justice, and those of the attornies and advocates whom the parties employ in the management of their causes.[1] The former are capable of being properly regulated, as the

[1] A complete return of the fees exacted by the various officers in the different departments of the King's service in Quebec Province, was prepared, under an order of the Lt. Governor, and is given in Canadian Archives, Q 5-2, pp. 445-466.

When this return, together with Carleton's observations upon the system of fees, had been transmitted to Colonial Secretary Hillsborough, he made the following reply:—"It is His Majesty's firm Purpose that every proper Measure shall be taken to remedy those Evils, and to remove that Scandal and Reproach brought upon His Majesty's Government, and the consequential unfavourable Impressions made upon the Minds of His Majesty's New Subjects, which are the Effects of the little Attention given by the Patentees in this Kingdom to Ability and Integrity in the Appointment of their Deputies; and of the shamefull Frauds and Exactions of exorbitant Fees which are practised, and of which you so justly complain. To this End I have received His Majesty's Commands to lay your Letters upon this Subject before the Lords of Trade for their Consideration, and to recommend such Remedies as their Lordships shall

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persons to whom they are due are all servants to your Majesty, and under the immediate controul of your Majesty's governour and council; and measures have been already taken to ease your Majesty's subjects in this province of some part of these fees: your Majesty's chief justice and clerk of the crown have remitted those that used to be taken by them in the supreme court; and those of the attorney-general for the conduct of criminal prosecutions have always been charged to your Majesty: and if those which are taken by the clerk of the supreme court for the civil business that is transacted there, and by the provost-marshal, or sheriff, and his bailiffs, for their summonses, arrests, and other ministerial business done by them in the course of the proceedings, and those which are taken in the court of Common Pleas, or the quarterly and weekly courts of the justices of peace, by the several officers of those courts, are found to be unreasonable, it will be easy to reduce them to a more moderate standard by a provincial ordinance for that purpose, if your Majesty will condescend to make such a reasonable addition to the salaries of these several officers as shall be a compensation for such diminution of their fees. The other cause of the expensiveness of law-suits is the rate of the fees of the attornies and advocates. These fees, it is evident, are not capable of a like reduction with the former, but must always be such as the parties and their lawyers shall agree upon; since it is the natural right of every man to set what price he pleases upon his labour. All that can be done to keep those fees from growing exorbitant is to prevent a monopoly of law business in the hands of a few lawyers, who might thereby be enabled to exact unreasonable rewards from their clients by the necessity the people would be under of either employing them upon the terms they thought proper to demand, or letting their business remain undone: and this has been already done by your Majesty's wisdom and indulgence in permitting Canadian notaries, attornies, and advocates to practise their respective professions notwithstanding their continuance in the profession of the Romish religion.[1]

Yet when every thing is done that can be done to diminish the expence of law proceedings, it is probable they will still be more expensive than in the time of the French government; which ought not to be a matter of surprize, since the prices of corn and provisions, and of all sorts of labour, are almost double of what they were at that time.

The slowness with which they are conducted upon the present establishment.

The next inconvenience arising from the present establishment of the courts of judicature complained of by the Canadians is the tedious length of law-suits. This is owing to the unfrequency of the terms or sessions of the supreme court of judicature, and of the court of Common Pleas, which sit only three times a year at Quebec and twice at Montreal. In the time of the French government there were three royal courts in the three several districts of Quebec, Three Rivers, and Montreal, vested with full power to determine all matters both criminal and civil: in each of these courts a judge appointed by the French king administered justice, and a king's attorney prosecuted on behalf of the crown: and they used for that purpose to hold two courts in every week throughout the year, except about six weeks in the months of September and October, and a fortnight at Easter: and besides these courts held regularly every week, they would sit on other days of the week, if the business before them made it necessary. From these courts there lay an appeal to the highest court of the province, which was called the superiour council; and this high court also sat every week: so that the difference between the expeditious methods of obtaining justice in the time of the French government, and the slowness of the proceedings

judge best adapted to redress these Grievances; and in the mean Time His Majesty trusts you will make some temporary Regulation to restrain the Fees of Office within some settled and certain Bounds, so far as Right and the Nature of the Case will admit, and also for punishing with Rigour those who shall be guilty of Exaction, or other mal-practice in their Offices." Q 5-2, p. 602.

[1] See Ordinance of Sept. 17th, 1764, and notes thereon; p. 149.

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upon the present establishment, is very striking in the eyes of the Canadians, and is esteemed a very considerable inconvenience.

Besides the usual ill consequences arising from the want of dispatch in law-proceedings, this unfrequency of the sessions of the superiour courts of judicature has been a principal cause of the increase of the fees of the Canadian attornies and advocates: for, as their opportunities of pleading causes happen so much seldomer than formerly, they endeavour to make up, by the value of the fees they now receive in the three sessions of the court of Common Pleas, the advantages they formerly derived from the number of them in the time that the French king's courts sat every week.

There is indeed in the present establishment a court of justice in each district of the province that sits every week for the dispatch of business. These are the courts of the justices of peace. This was a very judicious institution, and well suited to the circumstances and disposition of the people. Yet it is liable to some objections. For, in the first place, the justices of the peace, who are the judges of these courts, are not much skilled in judicial proceedings; and, secondly, the same justices not attending constantly at these sessions, it is often necessary, where a matter cannot be decided at one session, but is adjourned to the next, to repeat all the proofs and arguments before the justices at the second session, which had been produced at the former session before the other justices who happened not to be now upon the bench, which occasions an increase of expence and trouble: and, lastly, their jurisdiction extends only to such disputes as relate to sums of money that do not exceed ten pounds. In all contests for greater sums the parties are obliged to have recourse either to the quarterly courts of the justices of the peace, or to the courts of King's Bench and Common Pleas, where the sessions are held but three times a year.

Imprisonment for Debt.

The next inconvenience is the severity of the present method of proceeding in civil actions, by arresting and imprisoning the defendant's body. This, by filling the gaols with unhappy debtors, increases the number of the poor and helpless, and makes the families of the debtors, as well as the debtors themselves, become oftentimes a burden to the publick; and it is generally thought by the Canadians to be an unnecessary degree of harshness.

To remedy these several inconveniencies we beg leave to recommend to your Majesty the following plan for the administration of justice in this province for the time to come; which we have formed in imitation of that which was in use in the time of the French government.

A plan for the administration of justice in this province.

That this province should be again divided into the three districts of Quebec, Three Rivers, and Montreal, as in the time of the French government: which might be called the Shires of Quebec, Three Rivers, and Montreal; and each of these three districts should have separate officers of justice: that a Royal court of judicature should be established in each of the three towns of Quebec, Three Rivers, and Montreal, which are the capital, or rather only, towns of those several shires or districts: and that each of these courts shall consist of one able English judge, appointed by your Majesty, and invested with full powers to hear and determine all matters, both criminal and civil, arising within his jurisdiction, just as your Majesty's chief justice of the province is impowered to do upon the present establishment throughout the whole province.

Three royal judges, one to each shire or district of the province.

These judges to be English barristers at law, of five years standing at the bar.

These English judges should be barristers at law, of at least five years standing at the bar; and they should be such as, besides their skill and knowledge of the law, had a competent knowledge of the French language. And further, to enable these English judges more readily to understand the testimonies of the French witnesses, that would so often be examined before them, and likewise to comprehend the nature and extent of such of

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Each English judge should have a Canadian lawyer for his assessor, or assistant; but the sole power of deciding the causes should be vested in the English judges.

the antient laws and customs of the country as your Majesty shall think fit to be either continued or revived, we conceive, that it would be convenient to give each of them a Canadian lawyer for an assessor, or assistant to them in the decision of causes: but the Canadian assessors should have no vote or authority to decide the causes in conjunction with the English judges; but should only assist them with their opinion and advice, the whole power of finally deciding them being vested solely in the English judges. This employment of the Canadian lawyers, even in this subordinate capacity of assistants and advisers, would be thought a very gracious indulgence in your Majesty by all your Majesty's new subjects; and many of them, to whom it has been mentioned, have expressed an entire approbation of it. If they had an equal degree of authority with the English judges in the final decision of causes, they would be much more likely than the English judges to abuse it, by reason of their connections in the country, and the enmities and partialities that these connections would give birth to. And besides, there are other reasons, which would make it inexpedient to trust your new Roman catholick subjects, so lately brought under your Majesty's allegiance, with so great a degree of power. These judges and their assistants should hold their courts every week throughout the year, excepting one month at Christmas, one week at Easter, and another at Whitsunday, which are the three great seasons for holidays observed by Christians. And they should sit on the Tuesday or Wednesday of every week, that the contending parties and their witnesses might not be under a necessity of travelling on Sundays to attend them. If the use of grand juries should be thought fit by your Majesty to be continued in criminal prosecutions, these judges should take cognizance of criminal matters (that is, of such parts of the criminal proceedings as required the attendance of grand juries) only once a month, that the inhabitants might not be too much diverted from the care of their private affairs by their attendance in the courts as grand jurymen. But the other steps of all criminal proceedings that do not require the presence of grand jurymen, and, if the use of grand juries was laid aside, the whole of those proceedings should be carried on in the weekly sessions, as well as all the civil business of the district.

The judges should hold courts once a week, with a very few exceptions.

Method of proceeding in these courts.

The method of proceeding in these courts in civil actions might be as follows. The plaintiff might bring a declaration or plaint, in writing, into court, which might be either in the French or English language, as he thought proper, praying the process of the court to cause the defendant to be summoned to answer it; but not to be arrested by his body. This plaint should be read to the judge in open court, in order that he should determine whether or no it contained a good cause of action; and, till he approved it, no summons should be issued upon it. If he approved it, he should order it to be filed amongst the records of the court by the clerk or register of the court, and should award a summons to be sent to the defendant to come and answer the plaintiff's demand, at such a time as he, the judge, should therein appoint. If he neglected to come at the time appointed by the summons, without any good reason for his neglect, he should be condemned to pay the plaintiff a moderate sum of money, to be ascertained by the judge, as a compensation to him for his expence and trouble in attending the court, at the time appointed by the summons, to no purpose; and he should be summoned to come and answer the plaintiff's demand on another day. If he then also refused to come, judgment should go against him by default. When the defendant appeared, he should make his answer to the plaint of the plaintiff in writing, and either in the French or English language, as he thought proper: and this answer should be filed amongst the records of the court. The judge should then himself interrogate the parties concerning the facts, in their account of

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which the parties seemed to differ, and which appeared to him to be material to the decision of the cause: and these interrogatories and the answers of the parties should be reduced to writing by the judge, or by the clerk of the court from the words dictated to him by the judge. When the judge had thus found out in what facts material to the decision of the cause the parties differed, he should himself state these facts in writing, and declare that it was necessary for him to be informed, by proper testimony, whether they were true or false; and should ask the parties whether both, or either of them, desired that he should inquire into the truth of these facts by means of a jury, or by examining witnesses, or other proofs himself. If both, or either of the parties, desired to have a jury, a jury should be summoned to attend, at such following session as the judge should appoint. This jury should be paid for their attendance by the party that desired to have a jury; and if both desired it, then equally by both parties. They should receive five shillings sterling a man. For at present it is a subject of complaint among the Canadians that they are taken from their necessary occupations to attend upon juries (which is by no means an agreeable employment to them) without any consideration, for it: and this, if it happened every week without any compensation, would be thought, and perhaps justly, a very heavy burden. But for a reward of five shillings they will serve with great alacrity. These juries should be appointed in nearly the same manner as special juries are in England; that is, the ministerial officer, that executed the process of the court, should return to the court a list of four times as many persons qualified to be jurymen as were necessary to constitute a jury; that is, if a jury was to consist of twelve men, a list of forty-eight persons so qualified; and then each party should strike out twelve of the names contained in this list: and then the names of the remaining jurymen contained in it should be set down in a new list in an alternate order; that is, first one at the nomination of the plaintiff; then one at the nomination of the defendant; then another at the nomination of the plaintiff; and then another at that of the defendant; and so on: and these persons (whose names were thus set down in this new list, and who would be enough in number to constitute two juries) should all be summoned to attend the court on the day appointed for the trial of the cause, and should be called over in the court in the order in which their names were set down in the new list; and the first twelve, or other number sufficient to make a jury, that appeared in the court should be the jury to try the cause. By this method of chusing a jury the disagreeable and captious practice of challenging jurymen would be avoided, which is apt to give rise to animosities between the persons challenged and the parties who object to them.

Juries to be summoned, if the parties desired it. They should be paid for their attendance.

Manner of chusing them.

A majority of the jury should carry the verdict.

Of the jury so chosen a majority should have a right to determine the verdict: the present rule, of requiring an absolute unanimity amongst all the jurymen, being evidently absurd and unnatural, and, amongst other inconveniencies, productive of one of a very important nature, which is the perjury of some of the jurymen in every third or fourth cause: for it happens at least so often that there is a real difference of opinion amongst the jurymen, and that some of them go over to the opinion of the rest, in opposition to their own sentiments, and contrary to the oath they have taken to give a true verdict according to the evidence; which means, as we presume, according to their judgment of it. And it has sometimes happened, that a great majority of the jurymen has gone over to a small but resolute minority. This therefore calls loudly for a reformation; and more especially in a country where the natural and ordinary differences of opinion, that must frequently happen amongst jurymen, are likely to be greatly heightened by national and religious prejudices. If the agreement of twelve men

should be thought necessary to establish the truth of a fact, it would be necessary to impannel twenty-three jurors. But perhaps a bare majority of twelve men may be sufficient to answer all the purposes of justice in civil matters.

In criminal matters it might be proper to make the agreement of two-thirds of the jury necessary to the conviction of the accused person.

The juries should always give special verdicts.

And as the issues, or points of fact, that were to be proposed to the consideration of the jury, were to be drawn up in a minute and particular manner in words dictated by the judges of the courts, so the verdicts of the juries should be always special verdicts, stating the facts, as the jury find them to have happened, with great exactness and particularity. This would prevent juries from encroaching upon the province of the judges, and determining points of law by means of the short and general issues of "*Guilty or Not Guilty*," "*He did or did not undertake*," "*He does or does not owe the sum demanded*," and the like, that oftentimes involve points of law mixed with matters of fact, and thereby give juries an opportunity of committing these irregularities. Whenever these things happen (whether it be from the ignorance or want of discernment in the jurymen, or from their wilfulness or partiality) it is certain that a real injury is done to the losing party, whose right it is, according to the laws of England, to have the points of law, upon which his cause depends, determined by the learned and able judges whom your Majesty has appointed to fill your courts of justice, as much as it is to have the matters of fact in the cause determined by a jury of honest freeholders in the neighbourhood.

Examination of witnesses.

The witnesses examined in the trial of a cause should be examined *vivâ voce* in open court, in the presence of both parties, or their attornies and advocates; and cross-examined, if the adverse party thought proper: and should not be allowed to deliver their testimony by written depositions or affidavits taken in private; not even in those trials which were carried on without a jury; unless by the consent of both the parties, or by the particular direction of the judge, upon very strong reasons for so doing, moved and debated in open court.

Execution against the defendant's goods and lands.

When judgment was given for the plaintiff in a civil action, a writ of execution should go against the goods and lands of the defendant, but not against his person; directing the ministerial officer that executed the process of the court, to levy the sum of money awarded to the plaintiff by the judgment, upon the defendant's moveable goods and chattels; and, in case they are not sufficient for the purpose, then, but not otherwise, to sell part of his lands, to produce the remainder of the sum. And if the executive officer could not find a sufficient quantity of either moveable or immoveable property belonging to the defendant to raise the sum awarded, and the judge was of opinion, upon affidavits made before him to that purpose, that there was reasonable grounds to suspect that the defendant had secreted or concealed some of his effects, he might require him to deliver in to the court, upon oath, an exact schedule of all his estates and effects of every kind; and if he refused so to do, might commit him to prison till he complied. And if he omitted any part of his effects to the amount of twenty pounds sterling, in the schedule so delivered in to the court, he should be liable to the penalties of perjury.

Upon proper grounds the defendant might be required to deliver in to the court, an exact schedule of his estate and effects upon oath.

Costs.

The judge should have a power of awarding reasonable costs to either party, according to his discretion.

Sheriffs to the three several shires, or districts.

It would be convenient to have a separate ministerial, or executive, officer, to each of the three districts of Quebec, Three Rivers, and Montreal, to be called a Sheriff, which is the common name for such an officer in England, instead of one Provost-marshal for the whole province.

King's attornies in each of the three courts.

And it would be necessary for your Majesty to have an attorney in each of these courts, to prosecute for your Majesty in all criminal cases, and in

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suits concerning your Majesty's revenue, and in all other suits in which your Majesty's interest is concerned. If your Majesty should not think proper to appoint an officer expressly for this purpose, the power of carrying on these prosecutions for your Majesty might be vested in the clerk, or register, of the court; just as in your Majesty's court of King's Bench in England, the clerk of the crown, (whose principal duty is, to register, or enter, the pleas of the crown in the records of the court) is likewise attorney of your Majesty in that court, and prosecutes in your Majesty's behalf. But we submit it to your Majesty, that it would be convenient, and more suitable to the honour of your Majesty and the dignity of the court, to have a separate officer for this purpose, to be called your Majesty's Attorney for that district, as there was in the time of the French government.

Appeals from these courts to the governour and council, and from thence to the King in council.

From these courts there should lie an appeal to the governour and council of the province, and from thence to your Majesty in your privy council. One great use of the appeal to the governour and council would be to preserve an uniformity in the law throughout the whole province, which otherwise might gradually become different in the three different shires or districts of it, by the difference of the decisions that might be given in these several courts of justice, if they were intirely independant of each other, and subject to no common superiour council that might correct the errors of their proceedings.

And for the same reason the decisions of these courts should not be deemed to form precedents of sufficient authority to determine any subsequent disputes; but this authority should be ascribed only to those cases which had been decided by the governour and council of the province upon the appeals brought before them from these shire-courts, or by your Majesty's self in your privy council.

And in order that your Majesty's governour and council might not be destitute of the advice of persons skilled in the laws to assist them in the determination of the appeals that should be brought before them, it might be expedient that your Majesty's judges of these three courts, and perhaps also your Majesty's three attornies in them, should be made members of your Majesty's council of the province; by which means all the best law abilities in the province would be employed in making these important decisions that were to carry with them the force of law: and with this view it might be proper to require your Majesty's judges and attornies of the courts at Three Rivers and Montreal to attend the governour at Quebec for one month about Christmas time, in order to assist at the decision of these appeals, which should therefore be reserved to this season of the year.

The nature of these appeals.

These appeals should be only, as they now are, of the nature of writs of error in England, to correct the errors in law committed in the courts of these shires or districts, and not to re-consider the facts in the cause, unless they had been settled by the judge alone without the assistance of a jury. Where this was the case, the parties might, if they thought fit, cause the evidence itself to be taken down in writing by the clerk of the court, and signed by the witnesses and judge, that it might make a part of the record, as it does upon a trial by a general court martial in England: and, upon the removal of this record before the governour and council, they might reconsider the whole matter, the facts as well as the law, and give such judgment upon it as they thought just; but they should not admit any new evidence relating to it.

A second trial by a double jury.

Where the cause had been tried by a jury, the losing party might, if he thought proper, have it tried over again by a second jury, consisting of twice as many jurymen as the first jury; and the verdict of this second jury should be final with respect to the matters of fact determined by it.

When Gaspey shall be settled, a fourth judge might be sent thither, whose jurisdiction should extend over a district lying round about it, to be

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taken out of the district of Quebec, which is now immoderately large. Such an establishment would be of great convenience to the inhabitants of that part of the province.

These are the outlines of the plan which we humbly beg leave to recommend to your Majesty for the administration of justice, and which, we are confident, would be of great advantage, and give very great satisfaction to your Majesty's Canadian subjects, and effectually remove many of the inconveniencies of which they now complain.

It remains that we consider the first and greatest inconvenience abovementioned, which arises from the uncertainty of the law in the present condition of the province, and that we set before your Majesty the different methods by which, as we conceive, this inconvenience may be removed, and the laws of the province may be settled for the future upon a solid and permanent foundation.

Four different methods that may be taken to settle the laws of this province.

Four methods of doing this have occurred to us. The first is, to compose a code of laws for this province, that shall contain all the laws by which it is to be governed for the time to come, to the entire exclusion or abolition of every part both of the laws of England and the French laws that shall not be set down in the code itself.

The second is, to revive or re-establish the whole French law at once, to the exclusion of all the English laws, excepting those few which have been introduced by act of parliament, as above-mentioned, and a few more of the laws of England which are most eminently beneficial and favourable to the liberty of the subject, and to introduce these beneficial laws by a particular ordinance or proclamation, published in the province, in order to make them fully known to the Canadians. Such might be an ordinance to take away the use of the question, or torture, in criminal prosecutions, to change the cruel punishment of breaking on the wheel into hanging or beheading ; and to introduce the substance of the English law relating to the writ of *habeas corpus*, by declaring that no person in the province should be committed to prison, or detained in prison, by the order of any magistrate without a warrant in writing under the hand of the magistrate, expressing particularly the cause of his commitment or detention ; and that every man so detained in prison should, if he desired it, be brought before one of your Majesty's judges in the province, and either set at liberty, bailed, or remanded to prison, as the cause of his imprisonment, expressed in the warrant by which he is detained in prison, should require. Such an ordinance might be thought to fulfill, in a great measure, the promise given to your Majesty's British subjects by those words in your Majesty's proclamation above-mentioned, *of the enjoyment of the benefit of the laws of England*, supposing that your Majesty should think proper to determine that those words contain only a promise.

The third method of settling the laws of this country, so as to continue to the Canadians the use of several of their ancient customs, is to make the law of England the general law of the province, with an exception of those particular subjects concerning which your Majesty shall please to permit the former customs of the country to subsist, and with respect to those subjects to let the ancient laws of the country subsist in the manner they did at the time of the conquest, and without attempting to reduce them to writing, and enact them anew by particular ordinances, expressly setting them forth in all the extent in which your Majesty thought proper to let them continue.

And the fourth method of doing this would be to make (as in the third method) the law of England become the general law of the province, with an exception of those particular subjects, or heads of law, concerning which your Majesty shall please to permit the former customs of the country to continue ; and with respect to those subjects, to enumerate and set forth at

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length, in an ordinance or proclamation to be made for that purpose, the particular customs which your Majesty should think fit to be continued, to the exclusion and abolition of all other customs that should not be contained in the said ordinance or proclamation.

Advantages and disadvantages with which the first method of settling the laws will be attended.

The first of these methods of settling the laws of this province, namely, that of making a code of all the laws by which it shall be governed for the future, to the exclusion of all the laws both of England and France that are not contained in it, would certainly be the most troublesome in the execution to your Majesty's ministers and servants, both in England and in this province. And further, we conceive that it would be objected to by some of the Canadians, who are the most difficult to please, as a rash and dangerous experiment, to which the persons your Majesty should think proper to employ in the compiling this code would be by no means equal. They would frame their objection to such a project in some such manner as this: 'That to reduce the whole law anew into writing, with a rejection 'of a great part of it as useless in the opinion of the compilers, is a task of 'such extraordinary difficulty, that not only no person in this province is 'fit to undertake it, but even the ablest lawyers in the parliament of 'Paris, if they were to devote their whole time and attention to it, would 'hardly be able to execute it properly; that if any thing of this kind is 'attempted here, many important things will most certainly be omitted, 'and others be too concisely, imperfectly, or obscurely expressed; that in 'such a code no part of the ancient laws of this province ought to be 'omitted, notwithstanding some of them may never have been put in 'execution here; for that those laws are not less a part of the law of this 'country than those which have been often put in practice; and that the 'only reason why they have not yet been executed is, because the objects 'of them, that is, the cases to which they relate, have not yet arisen; and 'that when these cases shall arise, here is a wise law already provided be-'forehand to decide them; and that therefore no part of the custom of 'Paris, which was truly and properly the law of this province, ought to be 'left out of any code that shall be made for the government of it: and 'further, that there is a strong mutual connection between the different 'parts of this system of law, that makes it very difficult to change or 'abrogate any part of it, under a notion of its being useless, without 'weakening or rendering ineffectual other parts of it which the compilers 'may esteem useful; and that therefore the only safe way is to let it stand 'as it is; and that, in this view of permitting the whole of it to continue, 'there is no need of a code to express it over again in new words; that it 'is already expressed in writing in the best manner possible in the text of 'the custom of Paris itself and in the learned treatises of Monsieur Fer-'riere[1] and other writers upon it, and in the decisions of the parliament of 'Paris and of the superiour council of this province, upon the cases that 'have been contested before them; that indeed such a new code might be 'of some convenience to an English judge to save him the trouble of 'studying or consulting the French law-books, but that it would be a most 'dangerous and pernicious attempt to the rights and liberties of your 'Majesty's Canadian subjects.'

These are the objections which will certainly be made by some of your Majesty's Canadian subjects to the measure of compiling a new code of laws for this province, which we have stated to your Majesty at great length, that they may have all the weight with your Majesty which they may deserve. At the same time we beg leave to inform your Majesty, that we believe that these objections will be made only by a few persons in this pro-

[1] The reference is doubtless to the work entitled: "A comparison between the Code, Digest, and Novels, and the French Law & Custom of Paris, by Monsieur Ferriere, Professor of Law at Paris; in Six Volumes in Quarto."

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vince, and that the bulk of your Majesty's new Canadian subjects will be very well satisfied with such a code, and this even though it should in a great measure be taken from the laws of England, provided only that a few of the most important of their ancient laws and customs, and that most nearly affect their property and the future situation of their wives and children, be contained in it.

On the other hand, the advantages that would arise from this measure of compiling such a code of laws for this province would, as we conceive, be these that follow.

In the first place, the English judges, who will, as we presume, always be employed to administer justice in this province, would have a short and plain rule to go by, which they would easily be able to make themselves masters of, and would not be liable to be puzzled and misled by artful French lawyers, partially citing and misrepresenting and misapplying the doctrines and cases contained in the French law books.

And in the second place, the English inhabitants in general would have the satisfaction of knowing easily and certainly what the laws of the province were, upon what conditions they purchased lands or houses, what rights of alienating or devising them they thereby acquired, what duties to your Majesty, their lords or their tenants, they were bound to, and in what manner their wives and children would enjoy their possessions after their decease.

These would be no inconsiderable advantages resulting from the composition of such a code, even though done in a very imperfect manner. But there is another and greater advantage with which, as we conceive, this measure would be attended, which is the removing from the minds of the Canadians all idea of the excellency of the French laws and government, and of the superiour skill and ability of French lawyers and judges, bred in the parliament of Paris, and consequently of the happiness of having their law-suits decided by them. For we apprehend that, as long as the French laws and customs subsist at large without being reduced into a code, so that the several French law-books, books of reports, and edicts of the French king are the books of authority upon the subject, to which recourse must be had continually in the decision of points of law, so long will the people of this province retain a reverence for those edicts, reports, and other law-books, and for the authority of the French king who made the edicts, and for the parliament of Paris that has made the decisions reported in the books of reports, and the other learned French authors who have composed the other treatises on this subject; and this reverence will be accompanied with a continuance of their liking for that government from which these good laws and edicts and law-books proceeded, and under which they might be most ably administered, and consequently with a secret wish to return to that government, that is, to return to their subjection to the French king; whereas, if they continue to enjoy the most important of their ancient laws and customs under a new name, and expressed in a stile and phrase somewhat different from the former, and carrying with it the stamp of your Majesty's authority, the idea of their former sovereign, and of the parliament of Paris, and of the wise lawyers that compose it, would by degrees wear out of their minds, and they would think of nothing upon these occasions but the king of Great Britain and his code, and the great favour he had shewn them in permitting their principal laws and customs to continue, and giving them the express sanction of his royal authority. This we take to be a very capital advantage attending this measure of compiling a code of laws.

As to the inconvenience that might arise from the omissions or imperfections of this code (for we readily admit that it would be very imperfect) it

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must be observed, that they might be continually lessened and remedied by fresh ordinances, from time to time re-enacting those parts of the former laws and customs of this province which appeared to have been forgotten in the code, and which the governour and council thought worthy to be re-established: and in the mean time the code itself (imperfect as we suppose it to be) would still be sufficiently exact to determine all the common cases that occur in the ordinary course of human affairs, such as the rules of inheritance in the direct line, the rules of dower, and of the husband's rights arising from the matrimonial contract, the usual rules about quit-rents, alienation-fines, and other profits due to your Majesty and to other lords, the usual methods of investiture of lands by performing fealty and homage, and the like, which would be sufficient to prevent the country from falling into general confusion.

This code we suppose to contain the whole of the law by which the province is to be governed, criminal as well as civil, to the exclusion of the whole of the English law, as well as the French, except what was contained in the code itself, and the acts of parliament relating to the custom-house duties, and those few other statutes that expressly relate to this colony by name or sufficient words of description since the conquest of it, or which, though made before the conquest of it, yet extend to it by virtue of the general description of *all his Majesty's dominions now belonging to the crown of Great Britain, or that shall hereafter belong unto the same.*

These are the advantages and disadvantages with which, as we conceive, this first method of settling the laws of this province, by composing a code of laws for that purpose, would be attended.

Advantages and disadvantages of the second method.

The second method of settling the laws of this province, by reviving at once the whole French law, and introducing by an ordinance only a few of the laws of England that are most eminently beneficial to the subject, is evidently the shortest and easiest method that can be taken for this purpose; but it would be attended with the following inconveniencies.

In the first place it would have a tendency to keep up in the minds of the Canadians that respect for the laws of France, and the wisdom of the parliament of Paris, and the excellence of the French government, which has been above described, and which it would be one of the principal advantages resulting from the former measure, of compiling a code of laws, to extinguish.

In the second place it would give disgust to the English inhabitants of this province, who are fond of the laws of England and desirous of having the greatest part of them continued, and think they have a right to the enjoyment of them upon two distinct grounds.

In the first place, they think that every country that becomes subject to the crown of Great Britain (whether by conquest, exchange, or otherwise) becomes immediately subject to the laws of England, and that the laws by which it was formerly governed become immediately and *ipso facto* void and of no effect, being superseded by the laws of England without the aid of any act of parliament or royal proclamation for that purpose. In this we presume they are mistaken; since both the express declarations of the law-books, and those of your Majesty's attorney and sollicitor general in their report concerning this province, made in the year 1766,[1] and the dictates of natural reason inculcate a quite contrary doctrine, to wit, that the laws of the conquered people subsist in their full vigour till the will of the conquerour shall expressly change them. However this opinion, though not well grounded, is pretty general among the English inhabitants of this province.

[1] The Report of Yorke and de Grey; see p. 174.

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And in the second place, they say, that, supposing that the laws of England were not of course introduced into this province by the very conquest itself and the subjection of the country to the crown of Great Britain, yet that they have been expressly introduced by your Majesty's proclamation of the 7th of October 1763, in the words that have been mentioned in the former part of this report; in which your Majesty assures them, that they may confide in your Majesty's royal protection for the enjoyment of the benefit of the laws of England.

Advantages and disadvantages of the third method.

The third method of settling the laws of this province, by making the laws of England the general basis of them, and permitting the Canadian customs to continue with respect only to some particular excepted subjects, and this by a general reference to the French law-books in which those customs are contained, without attempting to enumerate and express them anew, would also be a very short and easy one to your Majesty's ministers and servants both in England and in this province; and will be very agreeable and satisfactory to your Majesty's British subjects in this province. Yet it will be attended with the following inconveniencies.

By preserving a considerable part of the French law in the lump, or by a general reference to the French law-books that contain it, it will in some degree keep up in the minds of the Canadians that reverence for the laws and lawyers of Paris, and that consequential opinion of the happiness of being subject to the French government (as being that under which those laws may be most ably administered) which all persons that are zealously attached to your Majesty's government would naturally wish to see extinguished. But this objection will take place in a much less degree against this method, than against the last-mentioned, or second method, by which almost the whole body of the French laws would be revived.

Further, if this third method of settling the laws is pursued, some of the Canadians will probably make the two following objections to it. They will say, in the first place, that the whole body of their laws ought to have been left intire, as there is a strong and well contrived connexion between all its parts, which makes it dangerous and detrimental to the welfare of the province to alter any of it. And, secondly, they will say, that, if any of the laws of England must be introduced here, they ought not to be introduced by general words, but by special ordinances, enumerating them, and setting them forth at full length, and in the French language, so that the Canadians may know and observe them. But these are objections which we believe will be made only by a few persons, and not by the generality of your Majesty's Canadian subjects.

Advantages and disadvantages of the fourth method.

The fourth method of settling the laws of this province, by making the law of England become the general law of it, with an exception of some particular subjects, or heads of law; and concerning those subjects to revive the ancient customs of the country by an ordinance or proclamation that should particularly set them forth and describe them in all the extent in which your Majesty should think fit to let them continue, without any reference to the law-books in which they were formerly contained, would be preferable to the third method in this respect, that by enumerating and describing, or reciting particularly, the several French laws and customs that were intended to be continued, it would cut off all connection, in the minds of the Canadians, with the French laws, lawyers, and judges, and the government under which they were maintained. The parliament of Paris, and the custom of Paris, and the French king's edicts would be no longer heard of, as being no longer of any authority; but the laws that were permitted to subsist must be cited in the words made use of by your Majesty to express them in the ordinance or proclamation which permitted their continuance. This would be a considerable advantage which this fourth

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method of settling the laws of this province would have over the third method; but it would be certainly somewhat more troublesome to your Majesty's ministers than that third method, and it would likewise be liable to many imperfections from the inaccurate manner in which the French laws and customs that were intended to be continued would probably be set forth; and it would be further liable to the two latter objections which might be made to the third measure, to wit, that it would give but an imperfect degree of satisfaction to some of the Canadians, by leaving them only a part of their ancient laws and customs, and that it would further cause them to complain of the general manner of introducing the laws of England without informing them exactly and particularly what those laws were, that they might know how to obey them. But these are objections which, as we before observed, would probably be made by a few persons only, and not by the generality of your Majesty's new subjects.

Conclusion. Thus we have set forth to your Majesty at considerable length (but not greater, we hope, than the importance of the subject required) the different methods by which your Majesty's gracious intention of settling the laws of this province upon a solid and permanent foundation for the time to come, and of leaving to your Majesty's new Canadian subjects the enjoyment of some of their ancient laws and customs that are most necessary to their tranquillity and satisfaction,may be carried into execution, together with the several advantages and disadvantages with which we apprehend that each of them will be attended. To weigh these advantages and disadvantages against each other, and draw a final balance in favour of one of these methods in preference to the rest, or to find a new method preferable to them all, is a task to which we find ourselves unequal, and which we apprehend can be successfully performed only by the wisdom of your Majesty's counsels. By residing in the province we may have been able perhaps, by our observation of the state of things here, to furnish your Majesty with necessary information and materials for forming a decisive judgement upon the subject; and that, in obedience to your Majesty's commands, we have endeavoured to do faithfully and fully, and to the best of our abilties, in this report. That our endeavours may be acceptable to your Majesty, and may be esteemed rather according to the zeal and integrity by which they have been directed, than according to the degree in which they may be found to answer the high purposes to which they were intended to be subservient, is the earnest wish of,

Your Majesty's Most loyal and devoted

SUBJECTS AND SERVANTS.

N.B. The foregoing draught of a report, which was prepared by Francis Maseres, Esquire, his Majesty's attorney general of the province of Quebec, by order of Guy Carleton, Esquire, the governour of the said province, was delivered in to the said governour on the 27th day of February 1769, but had not the good fortune to be approved by his excellency. Another report[1] was thereupon drawn up by other hands agreeable to the governour's sentiments, in which his excellency has omitted the consideration of all the public acts and instruments whereby the English law has been introduced, or attempted to be introduced, into that province, together with some other matters contained in the foregoing report; and instead of mentioning several different methods of settling the laws of that province for the future, with the several advantages and disadvantages that would probably attend each of the proposed methods, and leaving it wholly to his Majesty's wisdom to chuse one of the methods in preference to the others, as is done in the foregoing report, his excellency has thought fit to mention only one method of settling the laws of the province, which

[1] Up to the present, this Report has not been discovered among the State Papers.

he strongly recommends to his Majesty, as the only way of doing justice and giving satisfaction to the Canadians, which is, to continue the laws of England with respect to criminal matters, but to revive the whole body of the French laws that were in use there before the conquest with respect to civil matters. The chief justice, William Hey, Esquire, and attorney general of the province, not thinking it either necessary or expedient to revive the whole body of the French laws in civil matters, but only those parts of them (which indeed are very considerable) which related to the tenure, alienation, dower, and inheritance of landed property, and the distribution of the effects of persons who die intestate, delivered in to the governour two additional papers, or lesser reports, containing their reasons for not wholly agreeing to the report made by his excellency. And these three reports were delivered to Maurice Morgan, Esquire, about the 12th of September 1769, to be by him carried to England, and delivered to his Majesty's secretary of state for America.[1] The additional paper, or lesser report, of the attorney general was intitled his opinion concerning the governour's report, and was as follows.

ATTORNEY GENERAL MASERES' CRITICISM OF GOVERNOR CARLETON'S REPORT ON THE LAWS OF THE PROVINCE.[2]

The Opinion of the Attorney General of the Province of Quebec concerning the Report made by his Excellency Brigadier-General Carleton, the Governour in Chief of the said Province, to his Majesty in Council, concerning The State of the Laws and the Administration of Justice in the said Province; with The Reasons of his Dissent from some of the Matters contained in the said Report.

Objections to the proposal of reviving the whole body of the French laws relating to civil matters.

Your Majesty's attorney general of this province approves that part of the foregoing report which gives an account of the constitution of the government of this province during it's subjection to the French king, and believes the said account to be true in most particulars; but he cannot assent to that part of the said report which suggests to your Majesty the expediency of reviving the whole of the French laws in civil matters, for the following reasons.

Inconsistency of such a measure with his Majesty's former plan of conduct with respect to the province of Quebec.

In the first place, he thinks it will be a deviation from that plan of conduct which your Majesty has hitherto thought fit to pursue with respect to this province ever since the conquest of it by your Majesty's arms in 1760, which he conceives to have been, to endeavour to introduce the English laws and the English manner of government into it, and thereby to assimilate and associate this province to your Majesty's other colonies in North America, and not to keep it distinct and separate from them in religion, laws, and manners, to all future generations. He conceives that if this latter system had been that which your Majesty had adopted, your Majesty would have given orders to your general, Sir Jeffery Amherst, to whom

[1] The three reports delivered to Morgan were those of Governor Carleton, Chief Justice Hey and Attorney General Maseres. In a communication from John Pownall, Under Secretary of State for the Colonies, to the Clerk of the Council in Waiting, he states that, by Lord Hillsborough's orders, he has transmitted to the Council certain papers sent to His Lordship by the Governor of Quebec, 18th September 1769, pursuant to the Order in Council of Aug. 28th, 1767. These papers were:—

"Report upon the State of the Laws and Courts of Judicature in the Province of Quebec."

"Appendix to said Report."

"Attorney General Maseres' Opinion concerning said Report."

Hillsborough, writing to Carleton on Jan. 18th 1770, reports that Morgan has arrived and delivered the papers which will pave the way for a speedy decision on the state of Quebec. The reports however are not found in connection with any of these despatches. That of Maseres, which follows, is given by himself in his volume of "Commissions" &c.

[2] Maseres, "A Collection of several Commissions and other Public Instruments, &c." p. 50.

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this province was surrendered, to keep up, from the first moment of the conquest, all the courts of justice that were at that time in being in the colony, and even the several officers that composed them, upon the same footing on which they then subsisted. But as your Majesty's said general did immediately suppress all the former jurisdictions, and erect military councils in their stead, and in the articles of capitulation *refused to promise the inhabitants of this province the continuance of the custom of Paris, and the other ancient laws and usages by which they had been governed,* though requested in that behalf by the French general;—and as your Majesty did afterwards, in the fourth article of the definitive treaty of peace in 1763, engage to indulge your new Canadian subjects even in the delicate and important article of the free exercise of their religion, only *so far as the laws of England will permit*;—and as your Majesty, by your royal proclamation of the 7th of November[1] 1763, did encourage your British and other ancient subjects to go and settle in this and the other new-erected governments, and did promise them, as an excitement thereunto, *the immediate enjoyment of the benefit of the laws of England*;—and as your Majesty did afterwards, by your commission of vice admiral of this province granted to General Murray,[2] *expressly introduce all the laws of the English courts of admiralty into this province*; and by your commission to the same gentleman to be captain general and governour in chief of this province, did direct him to summon an assembly of the freeholders and planters in this province, and in conjunction with them *to make laws and ordinances not repugnant to the laws of England,* by which it seems to be pre-supposed that the laws of England were already introduced there; and did in other parts of the said commission *allude to divers of the laws of England as being already in force here, as particularly the laws relating to the oaths of abjuration and supremacy, and the declaration against transubstantiation*— From these several exertions of your Majesty's royal authority in favour of the laws of England, your Majesty's attorney general of this province humbly collects it to have been your Majesty's gracious intention to assimilate this province in religion, laws, and government to the other dominions belonging to your Majesty's crown in North America; he therefore conceives that the immediate revival of all the French laws relating to civil suits in this province, in the manner suggested in the foregoing report, will have at least the appearance of a deviation from the plan of conduct which your Majesty has hitherto adopted, and of a step towards a preference of the contrary system of keeping this province distinct from, and unconnected with, all your Majesty's other colonies in North America[3]: and this appearance he humbly conceives to be itself a considerable inconvenience, and very fit to be avoided, unless very strong reasons of justice or policy made such a measure necessary, which he does not conceive to be the case; for, on the contrary, he apprehends that the said total revival of the custom of Paris, and all the other French laws relating to civil suits, will be attended with the following additional inconveniencies.

Other inconveniencies would follow from such a measure.

First inconvenience.

In the first place, it will make it difficult for any of your Majesty's English subjects to administer justice in this province, as it will require much labour and study, and a more than ordinary acquaintance with the French language to attain a thorough knowledge of those laws.

Second inconvenience.

In the next place, it will keep up in the minds of your Majesty's new Canadian subjects the remembrance of their former government, which will probably be accompanied with a desire to return to it. When they hear the custom of Paris, and the parliament of Paris, and its wise deci-

[1] October, not November.
[2] Given in Maseres, "A Collection of several Commissions &c." p. 113.
[3] See Carleton's letters to Gage and Shelburne, pp. 195, 196.

sions, continually appealed to as the measure of justice in this country, they will be inclined to think *that* government to be best, under which those wise laws could most ably be administered, which is that of the French king; which, together with the continuance of their attachment to the Popish religion, will keep them ever in a state of disaffection to your Majesty's government, and in a disposition to shake it off on the first opportunity that shall happen to be afforded them by any attempt of the French king to recover this country by force of arms.

Third inconvenience.

And in the third place, it will discourage your Majesty's British subjects from coming to settle here when they see the country governed by a set of laws, of which they have no knowledge, and against which they entertain (though perhaps unjustly) strong prejudices.

The expensiveness and dilatoriness of the English law proceedings are the principal subjects of the complaints of the Canadians.

Your Majesty's attorney general of this province is further of opinion, that the body of your Majesty's new Canadian subjects are by no means either so distressed or so discontented by the introduction of the English laws into this province as they are represented in the foregoing report: at least he has seen no proofs of either such great distress or high discontent. What he has principally observed to be the subject of their complaints has been, either the expence or the dilatoriness of our law-proceedings; which he therefore conceives stand in need of reformation: and he is of opinion, that to establish three courts of general jurisdiction in all matters criminal as well as civil in the province, to sit every week in the year (with a very few exceptions) in the towns of Quebec, Three Rivers, and Montreal, would be the most adequate remedy for these complaints.

To erect three royal courts of general jurisdiction to hold their sittings weekly.

To make a code of laws for the use of the province.

And as to the substance of the laws which are to be henceforwards admitted in this province, he conceives that the best way of all to settle these would be to make a code of them, that should contain all the laws of every kind, criminal as well as civil, that were intended to be of force here, to the exclusion of all other laws, both French and English, that were not inserted in the said code; by which means all pretence would be taken away both from the French and British inhabitants of this province for complaining that they are governed by unknown laws. This he conceives to be a work of difficulty indeed, but by no means impracticable; and he apprehends that it would be a work of very great utility to the province, even though it should be very imperfectly executed, and many important articles should happen to be omitted in it; provided only that those things that were inserted in it were useful and reasonable, and set forth in a clear and proper manner: because he apprehends that the rules so inserted would be sufficient to govern at least all the common cases that would happen in the ordinary course of human affairs, such as descents in the right line, the right of representation in grand-children whose parents are dead, the dower of widows, the rents and services due to seigniors, the obligations and duties due from them to their tenants, the seignior's right to the common mutation-fines, his right of pre-emption of his tenant's land when the tenant is disposed to sell it, the rules of evidence in courts of justice, the solemnities necessary to be observed to give validity to a deed or will, and the like obvious and important matters; which would be sufficient to prevent the province from falling into confusion. And as to the nicer cases which might be omitted in such a code, they might afterwards be supplied by particular ordinances passed from time to time for that purpose.

To revive the old French laws relating to landed property and the distribution of the effects of intestates.

But if this measure of making such a code of laws should not be thought adviseable, your Majesty's attorney general of this province is humbly of opinion that it would be most expedient to let the English law continue to subsist in this province as the general law of the province, and to pass an ordinance to revive those of the former French laws which relate to the tenure, inheritance, dower, alienation, and incumbrance of landed property,

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and to the distribution of the effects of persons who die intestate. His reasons for thinking that the French laws upon these heads ought to be revived, are as follows.

These heads of law are three in number: First, those relating to the tenures of land in this province, or the mutual obligations subsisting between landlords and tenants with respect to them. Secondly, the laws relating to the power and manner of aliening, mortgaging, and otherwise incumbring landed property. And Thirdly, the laws relating to dower, inheritance and the distribution of the effects of persons who die intestate. And these several heads of law ought, as he humbly apprehends, to be revived in this province upon separate and distinct grounds.

Laws of tenure.

The laws of tenure, he conceives, ought to be considered as having been already granted by your Majesty to your new Canadian subjects by that article in the capitulation of 1760, by which your Majesty's general granted them *the enjoyment of all their estates, both noble and ignoble*,[1] and by the permission given them by your Majesty in the definitive treaty of peace in 1763, to continue in the possession of them[2]; these laws being essentially necessary to such possession and enjoyment. Such are the laws relating to the quit-rents due by the freeholders, who hold by rent-service, to the seigniors, the mutation-fines, the right of pre-emption, and the rights of escheat in certain cases; all which constitute the principal part of the property of the seigniors.

Laws relating to the manner of aliening and incumbring landed property.

But the laws relating to the power and manner of aliening, mortgaging, and otherwise incumbring, landed property, are not, as he apprehends, absolutely necessary to the enjoyment of the lands themselves, and therefore ought not to be reckoned quite so sacred and unchangeable as the laws of tenure themselves. Yet he conceives them to be very nearly connected with those laws, and almost dependant upon them, so that they could not be changed in any considerable degree without diminishing the value of the lands themselves, by means of the practical difficulties that would occur in making use of the new modes of conveying land that would be established in their stead; and therefore he thinks that they ought to be continued. And further, he conceives it will be the more necessary to revive or continue the French laws upon this subject, in order to prevent the introduction of the English laws upon the same subject, namely, the doctrine of estates-tail, the statute *de donis*, the method of defeating that statute by common recoveries, the doctrine of fines, the statute of uses, and the doctrine of uses in general, and other nice doctrines relating to real estates, which are full of so much subtlety, intricacy, and variety, that, if they were to be introduced into this province, they would throw all the inhabitants of it, without excepting even the English lawyers, into an inextricable maze of confusion. For these reasons he apprehends that the English laws upon this subject ought never to be introduced here; and that the former laws of the province relating to it ought for the present to be revived.

The practice of the English laws upon this subject would be highly inconvenient to the province.

Laws of inheritance and dower, and the distribution of the effects of intestates.

Lastly, as to the French laws concerning dower and the inheritance of lands and the distribution of the goods of intestates, with respect to such marriages as have been contracted, and such deaths as have happened, since the establishment of the civil government in this province, your Majesty's attorney general of this province is humbly of opinion, that those laws ought not to be considered as necessary appendages to the property of your Majesty's Canadian subjects in this province, and as having therefore been granted to them by implication in the articles of capitulation and the definitive treaty of peace; because they do not affect the property, or the rights, of the Canadians then in being, to whom alone those grants were made, but

[1] See Capitulation of Montreal, article 37, p. 16, also p. 26.
[2] See Treaty of Paris, especially the 4th article, p. 74, and p. 85.

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only guide and determine the course and devolution of that property after their deaths among persons that were then unborn. This, therefore, he conceives to be a matter upon which the authority of a legislator may properly be exercised. And he further apprehends, that in some time hence a change of the laws relating to these subjects, and especially of those relating to dower and the inheritance of land, would be highly beneficial to this province, the present excessive subdivision of the lands, by repeated partitions of them amongst numerous families, being productive of considerable inconveniencies. But this, he apprehends, need not be done at present; and he conceives, that, if ever it should be thought adviseable to do it, it ought to be done by a full and express declaration beforehand of the time at which the proposed changes should take place, with a power given to such persons as disliked them to prevent their taking place in their respective families by express provisions and agreements to the contrary, and should be accompanied with such temperaments and modifications as should make the adopting them be in a manner the voluntary act of the persons who were affected by them. But for the present he conceives it might be better to postpone those important changes, and to revive the ancient laws of this province concerning inheritance and dower, and the distribution of intestates estates, as well as those relating to the tenures of land and the power and manner of aliening and mortgaging and otherwise incumbring it. And this one ordinance, reviving the said ancient laws relating to landed property and the distribution of the effects of persons who die intestate, would, as he conceives, be sufficient to preserve the tranquillity of the province, and to give satisfaction to the bulk of the Canadians: at least, he apprehends it would be enough to begin with: and if, upon trial, it should be found necessary to revive some other of the French laws that formerly subsisted in this province, it might be done by another ordinance or two, that might be passed for that purpose, when the necessity of them should become apparent. By such an ordinance as is above-mentioned passed at present, and by the establishment of an easy and cheap method of administering justice in this province with sufficient expedition, he conceives that the far greater part of your Majesty's Canadian subjects would be contented. This therefore is what he humbly presumes to recommend to your Majesty as the best method which he can suggest for the settlement of the laws of this province, after the fullest consideration of this difficult and important subject.

FRANCIS MASERES,
Attorney General.

Quebec, September 11th 1769.

REPORT OF LORDS COMMISSIONERS FOR TRADE AND PLANTATIONS RELATIVE TO THE STATE OF THE PROVINCE OF QUEBEC.[1]

QUEBEC.

1769.
July 10th

To the Right Honorable the Lords of the Committee of His Majesty's Most Honorable Privy Council for Plantation Affairs.

My Lords,

Your Lordships having been pleased by your Order of the 28th of September 1768, to refer unto us two Letters to the Earl of Hillsborough, one of His Majesty's principal Secretaries of State, from sundry Merchants of London trading to, and deeply interested in the Province of Quebec, humbly recommending, that a full Legislature may be speedily granted for that Province; and that a number of His Majesty's Roman Catholic Subjects there may be admitted into the Council and House of Representatives[2]; and your Lordships having also further thought fit to refer unto us a Report made by His Majesty's Advocate, Attorney and Solicitor General, upon the heads of a Plan for establishing Ecclesiastical Affairs in that Province,[3] and to direct us to consider the said Papers, together with the present State of the said Province, in respect to the Administration of Justice, religious Establishments, and Revenue; and to report to your Lordships our Opinion, whether it may be advisable for His Majesty to direct an Assembly to be convened, and, if so, under what regulations and limitations such Assembly should be constituted, and what may be proper to recommend to their Consideration for the Welfare and interest of the Province in the several points above mentioned; We have, in pursuance of your Lordships said Order, taken the subject matter thereof into our Consideration, and beg leave to report to your Lordships.

That the Objects of examination and discussion, pointed out in your Lordships Order of reference, and upon which we are directed to report our opinion, appear to us to be of the greatest importance to the present and future Welfare of that Colony; and therefore, though the unsettled State of it's Government, the Jealousies and apprehensions on all hands represented to exist in the minds of the new Subjects on this Account, and the obstruction and embarrassment arising therefrom to the administration of public Affairs there, were circumstances, that did all concur to evince the necessity of some speedy reform; yet on the other hand, when we viewed the proposition of the

[1] Canadian Archives Q. 18 B., p. 7.

When this report was drawn up in 1769 a policy of great secrecy with reference to the future government of Quebec had just been adopted, with the result that between this time and the passing of the Quebec Act in 1774, few of the reports dealing with the policy of that measure are to be found among the State Papers. This report was prepared for the information of the Lords of Council and a copy of it was sent in "a secret and confidential" despatch from Hillsborough to Carleton, Dec. 1st, 1769, to secure his opinion of the proposals. The general character and purpose of the Report is thus expressed:—"This Paper will not only fully inform you what Regulations and Reform are proposed in respect to the future Government of this important Colony, but will also point out to you the Arguments and Reasoning by which it is endeavoured to support the several Propositions." Its secrecy is indicated thus:—"This Report is sent to you in the greatest Confidence, and therefore you should be careful not only that no part of it is communicated to any other person, but that in conversing upon the subject of any Difficulties or Doubts that may arise, you do avoid the Appearance of their being other than the Result of your own Reflections; and I am particularly to desire that you will bring back the Copy of the Report with you, without suffering it to fall into any other hands whatever." Q. 6, pp. 129-30.

[2] These letters have not been found, but they probably reflect a movement at the time in the Province of Quebec, as indicated in a letter from Carleton to Shelburne, Jan. 20th, 1768, (see p. 206), as also in his letter of Aug. 4th, 1768. In the latter he states that a few persons, who had been endeavouring to get up a petition for an Assembly, having failed, had apparently dropped the project.

[3] This paper is contained in a Report of the Board of Trade to the Privy Council, dated May 30th, 1765, and is entitled, "Heads of a Plan for the Establishment of Ecclesiastical Affairs in the Province of Quebec." This is referred to in the representation of the Board of Trade of Sept. 2nd, 1765, see p. 171. It is given in full in the recently received but uncalendared volume Q 18 A, p. 88. See also Appendix No. 4 to this Report, p. 274.

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Merchants in it's full extent, and saw the difficulties, that in the present peculiar State of this Colony would attend the making such a reform in it's civil constitution, as would give full satisfaction to the new Subjects, without violating those principles, upon which the British Government is fundamentally established; we did not think ourselves justified in making any report to your Lordships, or giving any opinion upon a matter, that His Majesty's former Councils had not thought fit in their great wisdom, even upon the fullest consideration, to take any resolution upon, without proceeding with the greatest circumspection, nor without the fullest information, that could be collected, as well from the correspondence of His Majesty's Servants there, as from the examination of persons here, who have been resident in, and are well acquainted with the affairs of Quebec.

The time, that has elapsed since the date of your Lordships order, has made it necessary for us to say thus much, lest your Lordships should impute to us a delay, which, if unnecessarily created, would not fail to subject us to your censure, in the case of an important part of His Majesty's Dominions suffering every inconvenience and disadvantage, that can arise out of a very imperfect, inadequate and defective Constitution, where the Inhabitants of it, consisting of above eighty thousand brave and loyal Subjects, do, by the nature and form of such Constitution, and the most unwarrantable Doctrines and Opinion founded thereon, Stand prescribed from every privilege, and denied every right, the possession of which can alone ensure their affection, and fix their attachment to the British Government.

How this comes to be the case in Quebec will be more fully seen by the following narrative of what has been established in respect to the Civil Concerns of that Colony, since it passed under His Majesty's Dominion; and from thence your Lordships will be enabled the better to judge of the propositions we shall submit to you, as the ground for such a reform in the Constitution of this Colony, as may consist with Justice and Equity, and we hope. be the means of for ever securing the possession of it to the Crown of Great Britain.

On the eighth of September 1760, Canada with it's dependencies was surrendered to His Majesty by Capitulation,[1] in which it is Stipulated, that the Inhabitants both Laiety and Ecclesiastics shall become subjects of the crown of Great Britain, reserving the free exercise of their Religion, and the entire possession of their property under all descriptions.

On the tenth of February 1763 the definitive Treaty of Peace was signed at Paris[2]; by the fourth Article of which, Canada with all its dependencies is ceded to the crown of Great Britain, and His Majesty agrees to grant the liberty of the Catholic Religion to the Inhabitants of Canada, and that he will consequently give the most precise and most effectual orders, that His New Roman Catholic Subjects may profess the worship of their Religion according to the Rites of the Romish Church, as far as the Laws of Great Britain permit.

In October 1763 His Majesty was pleased by Letters Patent under the Great Seal to appoint the honorable James Murray Esquire to be Governor of this Colony,[3] the limits of which are thereby fixed and ascertained, and it's former name of Canada changed into that of Quebec.

By these Letters Patent, and by the Instructions[4] from His Majesty, which accompanied them, the Governor is authorised and impowered,

First. To appoint a Council to assist him in the administration of Government, consisting (according to the usage and constitution of other Colonies) of twelve persons, eight of which to be chosen from amongst the most considerable of the Inhabitants and Persons of property in the said Province, and the remainder to be composed of the principal Officers of Government.

Secondly, To Summon and call, with the advice and consent of the said Council, as soon as the situation and circumstances of the Province shall admit, a general

[1] Capitulation of Montreal; see p. 8.
[2] Treaty of Paris; see p. 73.
[3] Commission to Governor Murray; see p. 126.
[4] Instructions to Governor Murray; see p. 132.

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Assembly of the Freeholders and Planters, in such manner, as he shall judge most proper, or according to such further directions or authorities, as shall be given to him under His Majesty's Signet or sign Manual, or by Order in Council.

Thirdly, To take himself, and also administer to each of the members of the said Council and Assembly the Oaths mentioned in the Act of Parliament of the first of George the First, and to subscribe himself and to cause them to subscribe the Declaration against Transubstantiation, mentioned in the Statute of the twenty fifth of Charles the second; and it is ordered, that, until the said Oath and Declaration shall have been so taken, and subscribed, no person, though elected, shall be capable of sitting in the Assembly.

Fourthly, To make, constitute and ordain, with the advice and consent of the said Council and Assembly, Laws, Statutes and Ordinances for the public peace, welfare and good Government of the said Province; which Laws, Statutes and Ordinances are not to be repugnant to, but, as near as may be agreable to the Laws and Statutes of this Kingdom; and until the Situation of the Province should admit of calling an Assembly, he is, with the Advice of the Council, to make from time to time such rules and regulations, as shall appear to be necessary for the peace, order and good Government of the Province; taking care, that such rules and regulations shall not extend to affect the life, limb, or liberty of the Subject, or to the imposing any Duties, or Taxes.

Fifthly. To establish such and so many courts of Judicature and public Justice, as shall appear to be necessary, and to constitute and appoint Judges, Commissioners of Oyer and Terminer, Justices of the Peace, and other necessary Officers and Ministers.

These are all the directions and authorities, which seem necessary for the present purpose to be recited; the rest of the powers contained in the Commission are the same, as are usually given to the Governors of other Colonies; but as it is material to observe, that the Letters Patent direct, that he shall execute his command according to the powers and directions contained therein, and in the Instructions which accompanied them, or "according to such further Powers or Instructions, as may be hereafter given "to him under His Majesty's Signet or sign Manual, or by Order in Council, and con-"formable to such reasonable Laws and Statutes, as shall be made and agreed upon by "him with the advice and consent of the said Council and Assembly."[1]

On the seventh of October 1763 His Majesty's Proclamation[2] was published, declaring the limits and extent of the four new Governments of Quebec, East Florida, West Florida, and Grenada, reciting the powers, given to the Governors by their Commissions under the Great Seal, of Summoning Assemblies, and of passing Laws with the advice and consent of the said Councils and Assemblies; and containing His Majesty's Royal Assurance, that, in the mean time, and until such Assemblies could be called, all persons inhabiting in, or resorting to the said colonies might confide in His Majesty's Royal Protection for the enjoyment of the benefit of the Laws of England.

By these Constitutions the form of Government established in this Colony by the Crown of France, and adopted with some Variations after the conquest of it, though not entirely abolished, as some persons have contended, was yet, in many parts of it, materially altered, and made to correspond with that form of Government, which has been established in His Majesty's other American Colonies. The having a complete Legislature competent to those regulations, which a Colony under such Circumstances must necessarily require, appears to have been one of the first Objects; and there can be no doubt, but that His Majesty's Commission and Proclamation, in the provision they make for this purpose, had in view to extend to His Majesty's new Subjects those Privileges, which exist in the principles of a British Constitution. But the exercise and operation of this Legislative Power having been rendered impracticable by inserting in the Commission, without sufficiently adverting to the state of the Colony the restriction,[3] that no person should sit in the Assembly, who had not subscribed the Test, required in this Kingdom by the Act of the twenty fifth of Charles the second, the powers of Government became confined to the Governor and Council, whose authority not extend-

[1] See p. 133.
[2] See p. 119.
[3] See p. 128.

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ing to cases, which might affect either the life, limb, or liberty of the Subject, or to the imposing Duties and Taxes, was incompetent to those regulations, which the situation of the Colony required; and consequently no provision has been made for establishing such a reasonable Revenue, as may be adequate to the necessary expences of Government, the whole of which is now a burthen upon His Majesty's Treasury here. The Roman Catholic Religion, though barely tolerated by the Treaty, remains without any regulation, reform, or control whatever, and that of the Mother Country without any provision or support.

Besides these capital objects, there are many other constitutional establishments, and necessary services, for which no provision either has been, or can be made in the present state of the Colony; and it has even been found necessary to disallow several Ordinances of the Governor and Council, in Matters merely of local regulation, and internal œconomy, from a consideration of the Want of a due authority to enact them.

These wants and defects are of themselves sufficient to evince the necessity of having a complete legislative power, for the establishment of which it is humbly conceived the Faith of the Crown stands fully pledged, both by the Commission under the Great Seal, and by the Proclamation; but the state of the Colony, in respect to the Administration of Justice in civil cases, is a circumstance, that does above all others mark the necessity of some form of Government more perfect and effectual.

On the seventeenth of September 1764 the Governor and Council promulged an Ordinance[1] for establishing and regulating Courts of Justice, by which the plan of Judicature is made to consist of a Superior Court, having the Jurisdiction of the Court of King's Bench; an inferior Court, having the Jurisdictions of the Court of Common Pleas, and Courts of Oyer and Terminer, Assize, and Goal Delivery; and it is declared by this Ordinance, that all matters, Civil and Criminal, shall be heard and determined in these Courts agreable to the Laws of England.

According to the construction put upon this Ordinance by those who framed it, it was to be understood, that not only the proceedings in these Courts were to be carried on according to the modes and forms established in the Courts in Westminster Hall, but also all the principles of the Law of England, relative to Descents, Tenure, &c., which totally, or in part differed from the Antient customs of Canada, and also all those local and Municipal Laws, which have from local convenience and consideration obtained in this Kingdom, were thereby introduced into Canada, and become Laws there. In consequence of these opinions and constructions, the customs of Canada, which before governed in all suits concerning property, were laid aside; and a further ill effect of the ordinance was, that, instead of that Summary and easy process, which had before been used in the adjudication of questions of this nature, it had the effect to introduce all that delay, perplexity and expence, which accompanies the lowest and most disgraceful practice in this Kingdom; and the new Subjects, who were precluded from serving on Juries,[2] or pleading their own Causes,[3] were compelled to entrust the prosecution of them to men unacquainted with their language and Customs, and who to the greatest ignorance added the grossest rapacity.

It is not to be wondered, that establishments, so inconsistent with the civil rights of the Canadians, and so oppressive in their operation, should have given that disgust, so strongly, and yet so respectfully expressed in their humble Address to His Majesty on this occasion;[4] more especially, when, in a Presentment of a Grand Jury[5] impanelled at a Quarter Sessions, they found their Religion presented, as illegal; themselves not only proscribed, as incapable of the common offices of Society, but also subjected to all the Pains and Penalties inflicted upon Popish Recusants in this Kingdom; and a right claimed by such grand Jury of being the only representative body of the Colony, and of being consulted upon all Measures of Government.

[1] See p. 149.

[2] See, however, Murray's comment on this feature of the ordinance, as given in note 4, p. 149, and note 2, p. 150.

[3] See note 3, p. 150.

[4] See Address to the King, 1764, p. 161.

[5] See presentment of Grand Jury, p. 153, and Reply of French jurors, p. 156.

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It is true indeed, that His Majesty has been graciously pleased to disapprove of such unwarrantable claims and proceedings, and to direct, that the Canadians shall be admitted to serve on Juries, and to plead as Advocates, in the Courts;[1] but the same erroneous opinion, with regard to the extension of the Laws of England, still prevails; the Laws and customs of Canada, in respect to property, have not gained admittance into the Courts; And His Majesty's new subjects, though they have a full Confidence and reliance on His Majesty's Equity, and His paternal Regard for their interest, do yet express great uneasiness, and wait with impatience His Majesty's Determination on those points, which so materially affect their Properties, Quiet, and Happiness.

The representations of this matter made by His Majesty's Governor in his Letters to the Secretary of State, copies of which are hereunto annexed,[2] are so full and explicit, and do so clearly and distinctly point out the danger, to which the Colony stands exposed, and the necessity of some speedy measures being taken to give satisfaction to the new Subjects in the several points we have considered, as to make it unnecessary for us to add any further observations of our own.

From these Letters, and from what has been said, it is evident, That the Colony of Quebec is in the greatest disorder and confusion, and that the authority of the Governor and Council, as limited by the Commission and Instructions, is in no respect competent to those regulations, which either the present state of it does, or the future progress of it may require; and as it appears to us, that there is no Method of curing these disorders, and giving effect and Stability to Government, but by establishing a competent legislative Authority, conformable to the Royal Assurances contained in the Commission and Proclamation; we are therefore of opinion, that it is necessary in the present State of Quebec, that a complete Legislature should be established; and that it would be advisable for the present to adopt not only the measure recommended by the Merchants[3] of admitting, under proper regulations and restrictions, a number of His Majesty's new Subjects into the Council and House of Representatives, but also into the Courts of Judicature, and other Offices of Government, by exempting them from the obligation of Subscribing the Declaration against Transubstantiation declared in the Statute of twenty fifth of Charles the second, conformable to what has been done in the like case in the ceded Islands, and has been found, both upon Antient precedent and late opinions of Law, to be a Matter entirely in His Majesty's Discretion.[4]

Having thus fully answered the first and most material part of your Lordships Order, by which we are directed to report our opinion, whether it may be adviseable for His Majesty to direct an Assembly to be convened, according to what the merchants propose; we shall proceed in the next place to consider, under what regulations and limitations such Assembly should be constituted.

And first, with regard to the Council, which will, under it's present form and constitution, as established by His Majesty's Commission, become a branch of the Legislature, whenever a House of Representatives is convened, it only remains for us to advise, That, in order to admit into it a reasonable proportion of His Majesty's New Subjects, the number of the said Council, which is now fixed to twelve persons, should be enlarged to fifteen; That a number of His Majesty's New Roman Catholic Subjects, not exceeding five, should be appointed members thereof, at such times as His Majesty shall think proper; and that they should be exempted from the obligation of subscribing the Declaration against Transubstantiation, which is by His Majesty's Commission and Instructions required to be taken and subscribed by the members of the Council in general.

With regard to the House of Representatives, which (though declared by His Majesty's Royal Commission and Instructions to be a part of the Constitution,) has never yet, for the reasons already mentioned, taken place, it will, we presume, be neither practicable nor expedient, in the present state of that Colony, to give it such a shape and form, as

[1] See ordinance of July 1st, 1766, and instructions for passing it, p. 172, and note 1, p. 173.
[2] See appendix to this report, Nos. 1, 3 and 5, pp. 274, 275.
[3] Referring to the letters mentioned in the first paragraph of this Report.
[4] See Report of Norton and de Grey, p. 171; also the opinion of Attorney General Yorke *re* the status of French Catholics in the island of Grenada, given in note 1, p. 185.

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shall be considered to be fixed and permanent under all circumstances; every establishment of this nature must be considered merely in the light of experiment, so far at least as depends upon the form in which it shall be first convened; open in all cases that regard the places which are to elect Representatives, the number to be elected, and the form of their qualifications, and proceedings, to such alterations, as a Variation in the state and circumstances of the Colony shall from time to time require.

For the present, as this Province is already divided into three districts, and, as we observe, that the Courts of Justice and other Civil Establishments are formed with a view of this division of it, we presume your Lordship's[1] will be of opinion, that the establishment of a House of Representatives should likewise correspond therewith; and therefore we take leave to propose, that it should consist of twenty seven Members, to be elected in Manner following, that is to say,

For the City of Quebec	7.
For the District of Quebec	6.
For the City of Montreal	4.
For the District of Montreal	4.
For the Town of Trois Rivieres	3.
For the District of Trois Rivieres	3
	27.

That the Members, chosen for the several Districts, shall not be obliged to take any other Oaths, than those of Allegiance, Supremacy and Abjuration; But care must be taken, that the Privilege, hereby meant to be given to the New Subjects, of being eligible for the Districts, is confined to them only, and to such of them as were actual Inhabitants of Canada, and possessors of Lands and Tenements therein at the time of the Treaty of Paris; That the Members elected for the Cities of Quebec, and Montreal, and Town of Trois Rivieres, shall, besides the Oaths of Allegiance, Supremacy and Abjuration, subscribe the Test against Transubstantiation required by the Act of twenty fifth of Charles the second Chap: Second.

That the mode and form of convening the first Assembly shall be prescribed by an Ordinance to be passed for that purpose; in which it shall be declared, that no person shall be capable of being chosen a Representative, or shall vote in the choice of a Representative, that has not attained the age of twenty-one years, and is not actually and bona fide, a proprietor or occupier of Lands, or a Tenement within the Province; but that the qualifications of both electors and elected, and the forms of proceedings in respect to elections be more particularly provided for by a Law to be passed in the first Assembly that shall meet; and that it be recommended, that no person, be capable of being elected for a District, that is not possessed, either in his own right, or in right of his Wife, of a Seigneurie within the Province.

That the person elected speaker of the Assembly shall take the Oaths of Allegiance, Supremacy, and Abjuration, and also subscribe the Test required by the Act of the twenty fifth of Charles the second, Chap: Second.

By the foregoing regulations your Lordships will observe, that it is probable, that the House of Representatives will consist nearly of an equal number of Protestant & Roman Catholic Subjects; and that, as those to be elected for the Cities of Quebec and Montreal, and for the Town of Trois Rivieres, must of necessity be Protestants, so it will be most likely, though not of necessity, that those for the Districts will be persons professing the Roman Catholic Religion; and we trust, that, when your Lordships consider the state of this Colony, in respect to the very great Superiority in number and property of the new Subjects, you will not think the rule of proportion between one description and the other to be more favorable to the new Subjects than Justice and equity require.

As to the proper times for the meeting of the Assembly, the nature and form of the Writ for election, and the Various other minute regulations incident to such an institution, they are matters, which must be left to the discretion of His Majesty's Governor, who will doubtless regulate his conduct herein, by what has been approved

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and found most beneficial in other Colonies, so far as such precedents conform to the peculiar Situation and circumstances of Quebec.

We are now come, my Lords, to that part of your Lordships Order, by which we are directed to consider of the present state of the Colony of Quebec in regard to the Administration of Justice, religious Establishments, and Revenue; and what may be proper to be recommended to the consideration of the Legislature there, for the welfare and interest of the Colony in these several points.

The general observations, which we have before submitted to your Lordships upon the state of the Colony of Quebec, in respect to these essential parts of it's interests, together with the remarks contained in the Governor's Letters already referred to, make it unnecessary for us to enlarge further upon the necessity there is for some speedy reform and regulation in these matters; and although the forming a precise and just opinion of what that reform and regulation should be, may at first sight seem to be accompanied with the greatest difficulty; yet as all these great objects have already been fully considered, and the Subject matter discussed at the proper Boards, and by His Majesty's Law Servants;[1] and as we have every other information, that could be collected from the correspondence of His Majesty's Governors, and from the examination of persons best acquainted with the state of the Colony, we shall not hesitate, with the assistance of these lights and informations, to suggest to your Lordships such regulations, as we are humbly of opinion may serve, as the Ground Work of Instructions to His Majesty's Governor, and remove all colour for any further delay, in matters of so great moment, and upon which the welfare, nay the very existence of the Colony depends.

With regard to the form and constitution of the Courts of Justice proper for this Colony, and the regulations necessary in Ecclesiastical matters, your Lordships have already before you not only the fullest Reports of this Board, but also the opinion of His Majesty's Law Servants given upon those Reports after the most mature deliberation;[2] And as we do not see any reason from any information received since the date of those Reports, to entertain the least doubt of what has been proposed in respect to Courts of Judicature, except only as to the establishment of Circuit Courts, and to the nature of Juries to be impanelled in Special criminal Cases, we submit, whether any thing further is necessary as to this institution, than to send over to the Governor the Report of this Board on the second of September 1765; and the Report thereupon of His Majesty's Attorney and Solicitor General on the twenty fourth of April 1767,[3] together with the draught of additional Instructions,[4] which was prepared in consequence thereof; with directions to recommend to the Legislature there a proper Law or Laws for establishing Courts of Judicature, and for regulating their proceedings upon the plan and principles laid down in the said Reports, and draught of additional Instructions;[5] excepting only, that, instead of the Circuit Courts of Assize, Nisi Prius, Oyer and Terminer, and Goal delivery therein recommended, they should follow the model of the circuit Courts of grand Session held for the Principality of Wales, as being a shorter and more comprehensive mode of proceeding; And instead of the exception in the sixth Article of that draught of Instructions, which follows immediately after the direction for the impanelling Canadian Subjects on Juries indiscriminately with the natural-born Subjects,[6] such their admission should be allowed with a proviso, that all criminal Offences should be tried by Juries de Medietate, composed equally of natural born Subjects and Canadians, excepting only in Cases where a natural born subject or a Canadian stands charged with the Wilful Murder of one of the same description, in which cases the Jury to be of the same description with the person to be tried for such Offence.

The regulations and reform necessary in respect to Ecclesiastical Affairs is a consideration, that requires to be more particularly discussed: for, although the Report of

[1] See report of Yorke and de Grey, p. 174.

[2] Referring to the Report of the Board of Trade of 2nd Sept., 1765, and the Report of Yorke and de Grey upon it. See pp. 171 and 174.

[3] This is an error, as the report is dated 14th April, 1766. See p. 178.

[4] See p. 178 and note 1, p. 173.

[5] See ordinance of July 1st, 1766, p. 172.

[6] As enacted in the ordinance of July 1st, 1766. See p. 173.

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the Board of Trade upon this Subject in 1765,[1] is very full and explicit, as to the measures which ought in justice and good policy to be adopted for such a reform of the Religion of the Church of Rome, as may leave the exercise of it upon the ground of that toleration meant by the Treaty of Paris; yet, as it does not point out, in what manner the different propositions are to be carried into execution it certainly leaves room for the observation of His Majesty's Advocate, Attorney and Solicitor General in their Report upon it, that many of the propositions have reference to Matters of Property, and to Rights, which cannot be altered or reformed by the sole authority of the Crown.

As this opinion of the learned Gentlemen confirms us in those ideas we have at all times entertained on this Subject, we shall beg leave to recite the several propositions, distinguishing such, as will, we conceive, require to be established by legislative authority, from those that may be carried into execution by Instructions from His Majesty to His Governor; and making such additions to, and alterations in the several Articles contained in the afore-mentioned Report of this Board, as more mature consideration and further information have pointed out to us.

The propositions in the Report of this Board,[2] which appear to require the interposition of the legislative authority, are principally those, that recommend either the immediate abolition, or gradual reform of the several Religious Communities, which not being, as we conceive, in general necessary to a free exercise of the Religion of the Church of Rome, as meant to be tolerated by the Treaty of Paris, are institutions of such a nature and tendency, as ought not to be allowed in a British Colony,

It is true indeed, that by the terms of the Capitulation, on which Canada surrendered to His Majesty's Arms, several of the Religious Communities were to be preserved entire; but we beg leave to observe, that this Capitulation can be considered in no other light, than as a temporary agreement between Officers on the one side and the other, submitted to the final decision of the Sovereigns of the contracting parties, who have, by Solemn Treaty, finally fixed, what shall be the condition, in respect to matters of Religion, of those Inhabitants of Canada, who by this Treaty became British Subjects; and therefore the Capitulation is now, we apprehend, out of the question, and the whole depends upon the fourth Article of the Treaty of Paris, which contains nothing more in respect to the Religion of the Church of Rome, than barely a free exercise of it by the new Subjects, so far as the Laws of England permit.

Under these circumstances we are of Opinion, that it ought to be recommended to the Legislature of Quebec to pass a proper Law or Laws for the reform of the several Religious Communities in the following manner, That is to say,

First, That the Community of the Jesuits be entirely abolished; and all their Lands and Property of every kind, personal Property only excepted, vested in His Majesty, His Heirs and Successors, to be applied to such public uses, as shall from time to time be thought best for the interest and advantage of the Colony, reserving to the present members of that community respectively during their Lives such pension, as shall be equal to the share each personally now receives of that Revenue.

Secondly, That the Chapter of Quebec, consisting of a Dean and twelve Canons, be also abolished.

Thirdly, That the office of Provincial Commissary of the Recollects be also abolished; and that Community not allowed to admit any new Fathers, or Brethren; and that their Revenues be vested in His Majesty, His Heirs and Successors, for the public uses of the Colony, in such sort, that it shall be applicable by the Crown to such uses, in proportion as the present members die, or are presented to Vacant Cures; so that, when the whole community shall by such events be dissolved, their Lands and Tenements will become a Fund in the hands of the Crown for the purposes aforesaid.

Fourthly, That the Seminaries of Quebec and Montreal be consolidated at Quebec under one Superior, in order to provide a succession of Pastors to the several Parishes; but that the members, admitted in order to become Priests, be limited to a certain

[1] Referring to the "Heads of a Plan, &c.," as indicated in note 3, p. 263.

[2] Referring to the "Heads of a Plan for the Establishment of Ecclesiastical Affairs in the Province of Quebec," various clauses of which are passed in review.

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number; and that the Revenues be vested in His Majesty, His Heirs and successors, to be applied as the Crown shall think fit for the support of such Seminary, and for other public uses within the Colony.

Fifthy, That no new Professions, Engagements, or Admissions be allowed in the convents or Religious Communities of Women; and that their Revenues, as they decrease in number, be in like manner vested in His Majesty, His Heirs and Successors, for the public uses of the Colony.

This, My Lords, is, we humbly conceive, the only reform in respect to Ecclesiastical Establishments in the Colony of Quebec, necessary to be provided for, and carried into execution by Legislative Authority, as affecting rights and property, which, as His Majesty's Law-Servants justly observe, are not subject to the controul of the single Authority of the Crown.

As to His Majesty's Supremacy in Ecclesiastical Cases, in absolute exclusion of all foreign power or jurisdiction whatever, it is, we humbly apprehend, a Right, and Prerogative, which, by the principles of this Government, as by Law declared, is inherent in, and inseparable from the Crown in all parts of the British Dominions; and therefore is already a part of the Constitution of this Colony: it may not however be improper, in order to remove all doubts or mistakes in a matter of so much importance, to refer to it as such in the preamble of the Law, that shall be passed for the reform abovementioned; which will, we apprehend, be a very sufficient, and not an improper promulgation to His Majesty's New subjects of this fundamental part of the constitution of that Government, to which they are now become subject, and will be a full and sufficient warning to them of the illegality and inadmissibility as well of any appeals to any foreign Church, Tribunal, or Jurisdiction, as of any order or regulation whatever in Ecclesiastical Matters, other than such as proceed immediately from His Majesty, or from those acting under His Royal Authority.

We shall, My Lords, proceed in the next place to state to your Lordships such propositions, respecting the toleration of the Religion of the Church of Rome in Quebec, in consequence of the fourth Article of the Treaty of Paris, as appear to us essential to the execution of that Treaty, conformable to its just sense and spirit.

Upon this occasion we have the satisfaction to find it declared in the Report of His Majesty's Law servants, annexed to your Lordships order of reference, that, as the several Acts of Parliament which impose disabilities and penalties upon the public exercise of the Roman Catholic Religion, do not extend to Canada,[1] His Majesty is bound by no ties or constitutional necessity to prohibit the profession of this Worship there; and that as His Majesty is not bound to prohibit, He is at liberty to tolerate such Worship, so far, and in such form as not to impeach or violate His Royal Supremacy.

Upon the ground of this opnion, and upon what is further set forth in their Report upon the plan for regulating Ecclesiastical Affairs in the Colony of Quebec Submitted by this Board in 1765,[2] we do not hesitate to propose to your Lordships,

First, That, as being necessary to the due execution of the Treaty of Paris, a proper person be licensed by His Majesty, during Pleasure, to Superintend the affairs of the Romish Church; but it will be essential to the legality of such appointment, that the powers should be so limited and circumscribed, as that it may not violate or impeach His Majesty's Supremacy in all causes, as well Ecclesiastical as Civil, which, as we have before observed, is inseparably inherent in the Crown; or have the effect in any manner whatever to obstruct His Majesty's Service, or the due course of Law.

Secondly, That to this end the conduct of the Superintendant in the execution of this Office should be governed by the following limitations and restrictions, to be prescribed by Instruction to the Governor, that is to say,

Thirdly, That such Superintendant shall not take upon him any outward Pomp or Parade incident to the dignity of Episcopacy in Roman Catholic Countries; nor take upon himself, nor appoint others to take cognizance of any matters of a civil, criminal, or ecclesiastical nature, except in such cases, as respect the conduct of the inferior Clergy in religious Matters; and in those cases, not to exercise any authority or Juris-

[1] See Report of Norton and de Grey, p. 171.
[2] Referrin; to the "Heads of a Plan, &c.," already cited.

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diction without the consent and approbation of the Governor; nor is the said Superintendant to use any other powers than such as the Governor and Council shall think absolutely necessary to the exercise of the Roman Catholic Religion by His Majesty's new Subjects.

Fourthly, That the said Superintendant shall not make any new Regulations in respect to Ecclesiastical Affairs, other than such as shall be necessary for the purposes aforesaid; nor shall any regulations whatever be made or established with respect to the Romish Church, or any persons appointed to Ecclesiastical Benefices in the Romish Church within the said Province of Quebec, without the consent and license of the Governor or commander in Chief; nor shall he allow of any public processions, or other ceremonies of Pomp or Parade; but shall take care, that the Rites of the Church of Rome be in all cases observed with such moderation and simplicity, as to avoid all occasion of offence or dispute between His Majesty's Protestant and Roman Catholic Subjects.

Fifthly, That the said person, so licenced, as aforesaid, to superintend the affairs of the Romish Church, shall, before he enters upon the exercise of any of the functions incident to his Superintendancy, take an Oath of Allegiance and Fidelity to His Majesty; which Oath shall be taken before the Governor sitting in Council, and entered upon Record in the Council Books.

Sixthly, That if the said person, so licenced to superintend the affairs of the Romish Church, shall in any respect act contrary to the foregoing regulations and restrictions, or shall otherwise misbehave himself, to the danger, Scandal or reproach of His Majesty's Government, the Governor or Commander in Chief shall have power to suspend him from the exercise of his said Superintendancy, transmitting his reasons for so doing to His Majesty by one of His Majesty's principal Secretaries of State.

As to the provision necessary to be made for the support and maintenance of the person, so licenced, as aforesaid, to superintend the affairs of the Romish Church, it is proposed, that he be admitted Superiour of the Seminary of Quebec, to be tolerated in manner hereinbefore mentioned, and have such Stipend or appointment, as His Majesty shall think proper out of the Revenues of that Seminary.

These propositions, together with what are before suggested in respect to the Religious Communities, contain every thing we have to submit respecting Ecclesiastical Affairs in Quebec; And your Lordships will observe, that they have for their objects,

First, Such a reform of the several Religious Communities, as can be made without prejudice to that free exercise of the Religion of the Church of Rome, Stipulated by the Treaty of Paris.

Secondly, By vesting the Estates and Property of those Communities in the Crown, to establish a Fund, out of which the Crown will be enabled to make a better provision for the support of a Protestant Ministry; and

Thirdly, To give such toleration to the free exercise of the Roman Catholic Religion by a Parochial Clergy under the Superintendancy of a person licenced for that purpose by the Crown, as consists with the Spirit and intention of the Treaty of Paris.

We are sensible, My Lords, that the regulations we have suggested, when compared with these objects, may be found in the execution to require some further addition; but we shall think we have not altogether failed in our wishes to comply with your Lordships direction, if what we have suggested shall lay the foundation of such Measures, as your Lordships superior Wisdom and experience shall enable you to recommend in a Matter, which we again beg leave to repeat is of the greatest importance, and which will not in our opinion safely admit of any longer delay.[1]

* * * * * *

It would, My Lords, have been a great Satisfaction to us, in making our Report to your Lordships upon the several matters contained in your Order of Reference, to have been able to have reduced, what we had to offer into a narrower compass; but although we have, with this view, taken the liberty to refer your Lordships to former Reports

[1] Here follows the section of the Report dealing with the problem of the provincial revenue and its administration. As this has but little bearing on the constitutional development of the Province, it is omitted.

upon the affairs of Quebec, in cases where we saw no reason to deviate from the Opinion or Propositions contained therein, yet the necessity of being explicit on every particular point, not as yet discussed, and to which your Lordships Order refers, has made it impossible for us to avoid taking up more of your Lordship's Time, than we otherwise wished to have done; and when your Lordships reflect upon the importance of the subject, and consider how much depends upon a speedy Determination on the measures we have now proposed, we trust we shall stand justified in our endeavors to state our opinion in the fullest manner, and to lay before you every circumstance necessary for your information; and if from what we have offered it shall appear to your Lordships, as it does to us, that the form of Government, if it can be so called, at present existing in Quebec, does not correspond with what was intended in the Establishment of it, and is in no respect competent to it's wants and necessities, but on the contrary productive of the greatest Inconveniences; That the doubts and apprehensions entertained by His Majesty's new subjects ought to be removed, and that it is neither just nor reasonable, that the expence of the Establishments in Quebec should any longer continue a Burthen on this country, we trust your Lordships will agree with us in opinion, that it is high time some steps were taken towards a necessary reform, in a case of so great Importance, as to affect not only the security of this Colony, but with it, that of all His Majesty's other Dominions in America.

Whether what we have suggested proposes such remedy as is adequate to the Evil, must be submitted to your Lordships; but we should not do justice to our own Sentiments, if we did not observe, that they are founded on the fullest Information; guided in those parts, that include great constitutional Questions, by the opinions of the ablest Lawyers in this Kingdom, and concurred in, not only by those, whose Offices and Residence in the Colony have afforded them the means of being fully acquainted with it's true Interest and condition, but as also of such respectable Persons both in the Church and in the Revenue Department in this Kingdom, who are by their Offices Members of this Board, and who have assisted us with their advice on this occasion.

At the same Time that we state this to your Lordships, in order to shew that no information necessary in this important consideration is wanting; and that the subject matter has undergone the most mature examination, it is our Duty to lay before your Lordships a Letter to the Secretary of State from His Majesty's Governor of Quebec,[1] received pending the consideration of this Business.

From the Copy of this Letter hereunto annexed your Lordships will observe, that the Governor States, that some Progress has been made towards a Report upon the Laws, and Administration of Justice, pursuant to His Majesty's Order in Council of the 28th of August 1767; That he considers this as the ground work of every other Regulation, and therefore waves giving his Ideas upon the Subject of Religion, and other matters, until that is entirely settled, which he says will be soon, and desires His Majesty's permission to return to England, as well upon his private Affairs, as in order to explain many points relative to that Colony; and represents, that by being upon the spot he should be able to clear up many things, and remove many difficulties, which at that distance can neither be so thoroughly discussed, or perfectly understood, as is necessary for the King's Service.

What influence this Letter is to have in your Lordships determination with regard to what is submitted to you in this Report must depend upon your Lordships wisdom

[1] See appendix No. 18. This letter is dated March 15th, 1769, and is given in Canadian Archives, Q 6, p. 34. The portion referred to is as follows:—"There would be much to say in Regard to the Affairs of Religion in this Province, but that being a delicate and tender Point, I do not design troubling Your Lordship with my Ideas thereupon until that of the Laws and Administrations of Justice, which I consider as the Ground work of the whole, is entirely settled, in which we have made some Progress in Obedience to His Majesty's Order in Council of the 28th August 1767; I hope 'eer long our Report thereon will be finished, when the same shall be transmitted to Your Lordship without Loss of Time.

"For the clearer Explanation of these, and many other Points, relative to this Province, as well as to settle some private Affairs, I wish to go Home for a few Months, * * * * * *

"By being upon the Spot with the King's Servants, I might clear up to them many Points, and remove many Difficulties, which, at this Distance, can neither be so thoroughly discussed, or perfectly understood, as is necessary for the King's Service, whose Interests, in Regard to the Province, I really believe, I could more effectually promote and advance by a Residence of a few Months in London, than of so many years in this Country, * * *" Q 6, pp. 37-38.

weighing all circumstances; but in the light in which we view the state of this Colony, exposed, as we conceive, to great danger, and suffering many Inconveniencies for want of some more perfect Settlement, we cannot but be of opinion, that however satisfactory it might be to receive Governor Carleton's Sentiments upon many points, relative to the propositions in question; yet the danger and disadvantage of any further delay is too obvious to allow us to consider his Letter, as a justification for our not recommending to your Lordship's to take some immediate Steps towards that reform which the state of the Colony requires; and therefore we humbly offer it as our opinion, that your Lordships, if you approve of the propositions we have suggested, should advise His Majesty to give the necessary Instructions for carrying them into execution; but we would recommend, that a discretionary power should be given to the Governor to defer any part of them, the execution of which he and the rest of His Majesty's Servants there shall think ought to be deferred, for such further examination, as may be necessary upon any Representation they may have to make; and we beg leave further to observe, that it is with a view to the exercise of this discretionary Power, and upon a Consideration of the Governor's Letter, that we have stated our propositions more at large, than we should otherwise have done, and have avoided any detail, that might have embarrassed the execution, in cases where he might wish to be left to the Guidance of his own Judgement.

We are,
My Lords,
Your Lordship's
Most obedient and
Most humble Servants,

HILLSBOROUGH,
SOAME JENYNS,
JOHN ROBERTS,
ED. ELIOT,
W^m^. FITZHERBERT,
THOMAS ROBINSON,
LISBURNE.

Ex^d^.

Whitehall
July 10^th^ 1769.

QUEBEC.

1769.
June 10^th^.

APPENDIX.

N° 1. Extract of a Letter from Guy Carleton Esquire, Lieu^t^. Gov^r^. of Quebec to the Earl of Shelburne, one of His Majesty's principal Secretaries of State, dated November 25^th^ 1767.[1]

N° 2. General State of the Canadian Noblesse actually resident in the Province of Quebec or in the French Service, and where resident in November 1767.[2]

N° 3. Copy of a Letter from Guy Carleton Esquire, Lieutenant Governor of Quebec, to the Earl of Shelburne, one of His Majesty's principal Secretaries of State, dated December 24^th^ 1767.[3]

N° 4. Plan of An Ordinance for continuing and confirming the Laws and Customs, that prevailed in this Province in the Time of the French Government concerning the Tenure, Inheritance and Alienation of Lands.[4]

[1] See Carleton to Shelburne, p. 196.
[2] Canadian Archives, Q 5-1, p. 269. This is printed in full in Report on Canadian Archives for 1888, p. 44.
[3] See Carleton to Shelburne, p. 201.
[4] See Draught of Ordinance *re* French Land Tenures, p. 204.

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N° 5. Extract of a Letter from Guy Carleton Esquire, Lieutenant Governor of Quebec, to the Earl of Shelburne, one of His Majesty's principal Secretaries of State, dated January 20th 1768.[1]

N° 6. Copy of a Report of the Lords of Trade to the Lords of the Committee of Council for Plantation Affairs, dated May 30th 1765, inclosing.

Heads of a Plan for the establishment of Ecclesiastical Affairs in the Province of Quebec.[2]

N° 7. Extract of a Report of the Lords of Trade to the Lords of the Committee of Council for Plantation Affairs, dated September 2d 1765.[3]

N° 8. Copy of a Report of His Majesty's Attorney and Solicitor General to the Lords of the Committee of Council for Plantation Affairs, dated April 14th 1766.[4]

N° 9. Copy of a Report of the Lords of Trade to the Lords of the Committee of Council for Plantation Affairs, dated June 24th 1766, inclosing,

Draught of Additional Instructions to the Governor of Quebec, relative to the establishment of Courts of Judicature in that Province.[5]

N° 10. Copy of a Report of His Majesty's Advocate, Attorney and Solicitor General, to the Lords of the Committee of Council for Plantation Affairs, dated January 18th 1768.[6]

N° 11. Copy of a Letter from Guy Carleton Esquire Lieutenant Governor of Quebec, to the Earl of Shelburne, one of His Majesty's principal Secretaries of State, dated December 10th, 1767.[7]

N° 12. Copy of a Letter from Lieutenant Governor Carleton to Grey Cooper Esquire, Secretary to the Lords Commissioners of His Majesty's Treasury, dated December 10th, 1767.[8]

N° 13. Officers proposed for the collection of the Provincial Duties at Quebec, and Salaries.[9]

N° 14. Provincial Duties for the Province of Quebec on Imports.[10]

N° 15. Copy of an Account of the Civil Establishment of the Province of Quebec for one Year.[11]

N° 16. Copy of an Estimate of the contingent and incidental charges of the Civil Establishment for the Province of Quebec for one Year.[12]

N° 17. Copy of an Abstract of the Imports at the Port of Quebec of certain Articles, on which Duties are proposed to be raised, for the years 1765, 1766 and 1767—And Estimate of the annual Revenue calculated from the said Importation.[13]

N° 18. Copy of a Letter from Guy Carleton Esquire Governor of the Province of Quebec, to the Earl of Hillsborough, one of His Majesty's principal Secretaries of State, dated March 15th 1769.[14]

Exd.

1 See Carleton to Shelburne, p. 205.

2 Canadian Archives, Q 18 A, p. 88.

3 Canadian Archives, Q 18 A, p. 131.

4 See Report of Yorke and de Grey, p. 174.

5 This represents the final presentation of the draught of Instructions given in note 1, p. 173. See also Q 18 A, p. 208.

6 This document has not as yet been discovered.

7 This and the following documents, except the last, are connected with questions of revenue, and relate to that portion of the Report which is omitted. This particular letter will be found in Canadian Archives, Q 5-1, p. 299.

8 Canadian Archives, Q 5-1, p. 300.

9 Canadian Archives, Q 5-1, p. 310.

10 Canadian Archives, Q 5-1, p. 306.

11 Canadian Archives, Q 5-1, p. 308.

12 Canadian Archives, Q 5-1, p. 311.

13 Canadian Archives, Q 5-1, p. 312.

14 Canadian Archives, Q 6, p. 34. The parts referred to in the Report are given in note p. 273.

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REPORT OF COMMITTEE OF COUNCIL ON ADMINISTRATION OF LAW BY JUSTICES OF THE PEACE.[1]

At the Council Chamber in the Castle of Saint Louis in the City of Quebec on Thursday the fourteenth day of September 1769.

PRESENT.

His Excellency Guy Carleton, Governor
The Honble William Hey. C.J
H. T. Cramahé, Thomas Dunn, Walter Murray, Colin Drummond — Esquires.

The Report of the Committee on the Administration of Justice by the Justices of Peace; Read at the Board, Approved and the Attorney General directed to prepare an Ordinance in Consequence thereof:

Read the Report of the Committee dated the 29th August and 11th instant, Appointed the 18th of August last to take into Consideration the present State of the Administration of Justice by the Justices of the Peace within this Province

Approved and Ordered to be Entered in this Book, and that the Attorney General[2] be directed to prepare an Ordinance in consequence of the New Regulations proposed to be made by the said Report.

"QUEBEC 29th August &
"11th September 1769.

The Report Vizt

"At a Committee Appointed to take into Consideration the State of the "Administration of Justice under the Justices of Peace in this Province.

"PRESENT

"The Honble William Hey, President
"H. T. Cramahé, "Thomas Dunn, "Colin Drummond — Esquires.

"Who agreed upon the following Report

"In obedience to an order of Council bearing date the 18th day of August last. We have taken into our consideration the several Matters therein referred, in consequence of which we beg leave to represent to Your Excellency and the Council, that the several Authorities & powers of the Justices of Peace in Matters of property as contained in the Ordinance of September 1764.[3] Appear to us to have been very injudicious in their Original Institution, and in the exercise of them, more particularly within the District of Montreal exceedingly grievous and oppressive to the Subject. It is well known that in England, where the Justices of Peace are for the most part Men of large Fortunes, who have a Considerable interest in Com-

[1] Canadian Archives, Q 6, p. 146. Owing to complaints which had reached the Council as to the practices of some of the Magistrates of the District of Montreal, the Council took up the matter and addressed to all the Magistrates of that District a letter of remonstrance and advice. This was dated July 10th 1769, and is given in Q 6, p. 134. The present report covers the same ground and upon it was based the Ordinance of February 1st, 1770, which follows this report.

[2] At this time Francis Maseres, being desirous of returning to Britain, was granted, by Governor Carleton, a year's leave of absence. The Governor explained the circumstances in a letter to Hillsborough, of Oct. 3rd, 1769, and in which the lack of harmony between Carleton and Maseres is fully evidenced. At the close of the letter Carleton states that Henry Kneller had been appointed to act as Attorney General in the interim; hence upon Kneller fell the duty of draughting the new ordinance.

[3] The Ordinance of September 17th, 1764. See p. 149.

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mon with the people over whom their Authority is exercised, no such power is entrusted to them either by the Commission itself, or any of the Various Acts of Parliament which relate to their Office: And tho the ill Advised construction of the great Courts established here for the determination of property in the year 1764 Confined Originally in their Session to two Terms in the year and only now enlarged to three, might have made it necessary to Create Smaller Jurisdictions in order to conform in some Measure to the Ancient practice of the Colony, and to give a freer and quicker Circulation to the Course of Justice, yet we apprehend that even under those circumstances, the Authority given to the Justices hath been both too largely and too confidently entrusted, and requires to be retrenched, if not wholly taken away in almost every Instance.

But that is not all; what is still more unfortunate; we find even those powers large as they are, to have been in some instances extended, and a Jurisdiction usurped to the great prejudice of the parties whose property has been the Subject of it, without any right (as we conceive) to interpose in such Matters, as derived from that Ordinance, or any other Authority that has yet come to our knowledge: for, by the ill penning of that Ordinance, and for want of a Clause which should have expressly forbid them to intermeddle in those Matters, the Justices of Montreal have to our knowledge in one Instance, and probably in many others which have passed without notice, assumed to themselves powers of a Nature not fit to be exercised by any Summary Jurisdiction whatsoever in consequence of which Titles to Land have been determined & possessions disturbed in a way unknown to the Laws of England and inconsistent with the Solemnity and Deliberation which is due to Matters of so high and important a Nature. And we are not without Information, that even in cases where personal property only has been in dispute, One Magistrate in particular under pretence that it was at the desire & request of both the contending parties, has by himself exercised a Jurisdiction Considerably beyond what the Ordinance has allowed even to three Justices in full Court at their Quarter Sessions.

From an Omission of a Similar nature and for want of ascertaining the manner in which their Judgements were to be enforced, we find the Magistrates to have assumed another very high and dangerous Authority, in the exercise of which the Goals are constantly filled with numbers of unhappy Objects, and whole families reduced to beggary and ruin. It being a Common practice and the usual Method of their process to take Lands in Execution and order them to be sold for the payment of ever so small a debt, or in case there are no Lands to satisfy the debt to commit the party to prison the sad Consequences whereof, and wretched Servitude to which a people are reduced whose persons and property are thus exposed, we believe we * not enlarge upon further, then to observe that the rapid Sale of Estates under Judgements out of the Common Pleas, or even the Supreme Court itself seems to be within the same Mischief and to require some effectual tho' perhaps a different remedy.

Sic.

If any thing could yet be wanting to Compleat the Misery of such a People it would be the consideration that those powers Originally calculated for the ease of the Suitor and to facilitate the course of Justice should become the very Instrument of his Oppression and ruin, and instead of affording a Cheap and expeditious remedy for the recovery of small Debts should either direct or Connive at such a Complicated and expensive Mode of Process, as (if we may collect from one instance where the Expence of suing for a debt of Eleven Livres Amounted to Eighty four) must either deter the Creditor from pursuing a Just tho small debt, or, ruin himself or his adversary and perhaps both in the pursuit of it, which will propably always be the case where the Office of a Justice of Peace is considered as a Lucrative

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one and must infallibly be so where it is his principal if not only dependence.

In Justice however to the Magistrates of this District we ought to Declare that these Observations are not designed to extend to them.

For these and many other reasons which we are tender of enlarging upon, we conceive it to be high time to put a Stop to this unequal, Wasteful and Oppressive mode of administering Justice. And to Substitute some other in its place, more conformable to the System which formerly prevailed here, and less liable to the Objections which so manifestly Accompany this both in its Institution & Practice.

And for that purpose we recommend it to Your Excellency in the first place to appoint an other Judge for the Court of Common Pleas at Montreal and as a Compensation for the Extraordinary duty which will be required that their Salaries may be made £200 p. an[m]

And 2[dly] that an Ordinance should be immediately prepared which after setting forth in a Preamble some or all of the Grievances here mentioned, And the good Disposition in Government to attend to and redress the Injuries Complained of by the Subject as soon as they are made known to them, should abrogate and annull all that part of the Ordinance of 1764 which gives Authority to the Justices of Peace to determine Matters of Civil property in any shape or manner whatsoever, and expressly define their power to be barely such as the Commission itself Warrants and the Ordinances of this Province (except that of September 1764) has entrusted to them.

It should then after reciting the reasons, namely to prevent a failure of Justice And to supply a Quick and Competent Jurisdiction in Matters of small Value not at present Cognizable in either of the great Courts, give the Court of Common Pleas a Jurisdiction, which at present it has not, to hold plea in all Matters however trifling the demand may be and direct that both Courts should sit in Quebec and Montreal once in every week. (seed and Harvest time and a fortnight at Easter & Christmas excepted) thro'out the year. But that for all Matters under the sum of Ten pounds, one Judge only need be present.

In the latter case their Process should be by summons, And in all Executions where the debt and Costs does not Amount to Ten pounds Halifax Currency no Capias ad satisfaciendum to Arrest or detain the body should issue but a *fieri* facias against the Goods and Chattels only (with an Express exception to Beasts of the Plow) unless the Party chuses that his Land should be sold, in which case he should sign upon the back of the Process his Consent and request for that purpose. It might not be amiss too to give the Judges a power to levy the debt where it was under Ten pounds by instalments, for it often happens that a Debtor is exceedingly distressed to pay tho'. but a Moderate Sum and upon the instant of demand which yet by his Industry or by some event near taking place but which he Cannot anticipate, he might pay with ease to himself it given times.—Upon an Affidavit of this Sort We think they be allowed to mark upon the Writ *to be levied by Instalments* 20 Sh[s] on such a day. 20. at such other And the remainder at such other.

But these times ought to have some Limitation and perhaps should not exceed 3 Months for the last payment.

If the Judge has reason to suspect that the party secretes his Effects or has disposed of them after the Commencement of the suit in order to avoid their being taken in Execution, he should be at Liberty to issue Process against the Lands immediately. and for want of them to commit to prison till the Debt is satisfied.—The truth of which should be examined upon Affidavits. In all other matters, where the debt or Demand is above the Value of 10 pounds they should proceed as usual except that where Lands

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are taken in Execution, they should be made subject to the debt or demand immediately from the day of the date of the Writ, and avoid all Subsequent Sales and Mortgages or any other disposition or Incumbrance of them, but not absolutely sold for six Months, after Several Publications in the Gazette, and Notice affixed at the Church door of the Parish in which the Lands lye and other Neighbouring Parishes.—nor should the sale even then be good 'till a Report was made to one of the Judges of the Court of the quantity and produce and Condition of the Lands with the Amount of the Purchase Money and the Sale Confirmed by him.—

It is difficult if not impossible exactly to ascertain the Quantum of Expence in recovering these small Debts, but we recommend it to the Gentlemen who preside in these Courts to reduce it as much as possible, and we have no doubt but they will give a proper attention to a matter so interesting to the Honour of the Crown and the Convenience and ease of the Subject.—

The Administration of Justice in causes of small Consequence we apprehend will be tolerably well provided for in the Towns of Quebec and Montreal upon this Establishment more especially if there be added (as perhaps may be necessary at least Convenient,) One Officer of Justice in each, who might decide in all Causes to the value of Fifty Shillings Current Money and enforce his decision by distress and Sale of the Defend[ts] goods only.

These Officers to be Appointed by your Excellency, by Special Commission independant of the General Commission of the Peace (tho' it would be adviseable for them to have both, in the Nature of the Intendants Subdelequis they may perhaps be well appointed by Virtue of the Powers given to Your Excellency in your Commission, but we rather recommend it to be done by an Ordinance.

And You should be impowered to Appoint more of these Officers in different parts of the Province as the Circumstances and Situation of things may require, and as in your discretion, they may appear to be necessary whose Jurisdiction might be at least equal to what was given to a single Magistrate under the Ordinance of Septem[r] 1764.

These are the observations that have Occured to us upon this Subject: We believe the regulations here proposed will be found to be Salutary, and meet the Grievances at present so loudly and so Justly complained of, And we Accordingly recommend them to be immediately Carried into Execution.

One observation however has escaped us, which we beg leave to add, with Regard to the Assize of Bread which by an Ordinance of this Province bearing date the 3[d] of September 1764,[1] is directed to be regulated by 3 Justices of the Peace; And tho this Jurisdiction will still be preserved to the Justices, yet we are apprehensive that they will be indisposed to exercise it, if they should resent the Deminution of their Authority which the Regulations we have proposed are designed to make.—That Authority therefore very usefull and necessary to the publick should be transferred in case of their neglect to the two Judges of the Common Pleas, and the Justice who has a Commission in small Matters in the way that we have recommended.

(signed) "W. Hey. P"

1 "An Ordinance, Relating to the Assize of Bread, and for ascertaining the Standard of Weight and Measures in the Province of Quebec." Sept. 3rd, 1764. See "Ordinances made for the Province o Quebec, &c." Que. 1767.

AN ORDINANCE FOR THE MORE EFFECTUAL ADMINISTRATION OF JUSTICE, AND FOR REGULATING THE COURTS OF LAW IN THIS PROVINCE.[1]

Preamble.

Whereas it has been found by Experience, that the several Provisions contained in an Ordinance, bearing Date the Seventeenth Day of September One thousand, seven hundred and Sixty four, and intituled, amongst other Things, "An Ordinance for regulating and establishing the Courts of "Judicature," by virtue of which certain Powers and Authorities are given to the Justices of the Peace for this Province, as well separately as collectively, to hear and determine in matters of private Property between Party and Party, instead of answering the good purposes for which they were ordained, have become an intolerable Burthen to the Subject, and proved the means of great Disquiet, Vexation, and Oppression.

Authority of the Justices in Matters of Private Property taken away;

except from Such as have a Special Commission for that Purpose.

It is therefore Ordained and declared, by His Excellency the Captain General, and Governor in Chief of this Province, by and with the Advice and Consent of the Council of the same, That from and after the day of the Date of the Publication of this Ordinance, all Jurisdiction, Power, and Authority in Matters of Private Property, belonging to or exercised by any Justice or Justices of the Peace for this Province, or any District, Part, or Member of the same, except Such as have already procured, or hereatfer may procure a Special Commission for that Purpose, under the Hand and Seal of the Governor, or Commander in Chief for the Time being, shall be clearly annulled, taken away, and determined; and that from and after the day of the Date of the Publication, aforesaid no Justice or Justices of the Peace, except as before excepted, shall have any Power or Authority to hear, examine or determine any Matter of Private Property between Party and Party, or to make, pronounce, or deliver any Judgment, Sentence, Order, and Decree, or to do any Judicial Act whatsoever touching the same.

Clauses in the Ordinance of September 1764, repealed;

And it is further Ordained and declared by the Authority aforesaid, That from and after the Day of the Date of the Publication aforesaid, the following Clauses or Parts of an Ordinance, bearing Date the Seventeenth day of September One thousand, seven hundred and sixty-four, and intituled, amongst other Things, "An Ordinance for regulating and establish-"ing the Courts of Judicature" shall be repealed, and the same are hereby repealed and absolutely revoked and made void; that is to say, "And Whereas it is thought highly necessary for the Ease, Convenience, "and Happiness of all His Majesty's loving Subjects, that Justices of the "Peace should be appointed for the respective Districts of this Province, "with Power of determining Property of small Value in a summary way; "it is therefore further ordained and declared by the Authority aforesaid, "and full Power is hereby given and granted to any one of His Majesty's "Justices of the Peace within their respective Districts, to hear and finally "determine in all Causes or Matters of Property, not exceeding the Sum of

[1] Canadian Archives, Q 62, p. 528. As indicated above (note 2 p. 276) acting Attorney General Kneller was required to draught an Ordinance based upon the Report of the Council on the subject of the administration of Law by the Justices of the Peace. This draught was read in Council, Jan. 10th, 1770, and referred to a committee consisting of H. T. Cramahé, Thos. Dunn, and Colin Drummond. On the 1st of February the committee reported the draught, with certain amendments, and the ordinance as amended was approved and adopted, and ordered to be translated into French. On February 14th the translation was read, and the ordinance and translation were ordered to be published in the *Gazette*. The ordinance when published gave great offense to the Magistrates in the District of Montreal, who, under the leadership of Charles Grant, a member of one of the leading British mercantile houses engaged in the Canadian trade, prepared a memorial in remonstrance. See Q 7, p. 95. This, Carleton in forwarding, attempts to answer. See Q 7, p. 89. Among other protests entered was one by a French Magistrate, Pierre de Calvet, under the title, "Observations sur L'Ordonnance du 1re février dernier." See Q 7, p. 274.

"Five Pounds Current Money of Quebec; and to any Two Justices of the "Peace within their respective Districts, to hear and finally determine, in "all Causes or Matters of Property not exceeding the Sum of Ten Pounds "said Currency; which Decisions being within, and not exceeding the "aforesaid Limitation, shall not be liable to an Appeal: And also full "Power is by the Authority aforesaid given and granted to any Three of "the said Justices of the Peace to be a Quorum, with Power of holding "Quarter Sessions in their respective Districts every Three Months, and also "to hear and determine all Causes and Matter of Property which shall be "above the sum of Ten Pounds, and not exceeding Thirty Pounds, Cur- "rent Money of Quebec, with Liberty of Appeal to either Party to the "Superior Court, or Court of King's Bench;" and all and every other Ordinance or Ordinances, and all and every Article, Clause or Sentence, in them and every of them, by which any Jurisdiction, Power, or Authority, to hear and determine in Matters of Private Property between Party and Party, is given, limited and Appointed to any Justice or Justices of the Peace, for so much as concerneth the same, shall also be repealed, and the same are hereby repealed, and absolutely revoked and made void.

and all others that give Authority to the Justices to determine Matters of private Property.

Penalty upon the Justices for Disobedience.

And it is further ordained and Declared by the Authority aforesaid, That from and after the Day of the Date of the Publication aforesaid, if any Justice or Justices of the Peace, or any other Person whatsoever, shall offend or do anything contrary to the Purport, true Intent, and Meaning of this Ordinance, he or they so offending, besides being liable to answer the same in a Criminal way, Shall also forfeit and lose, unto the Party grieved by any Thing so done, his, her, or their treble Damages, which he, She, or they shall sustain and be put unto by means or Occasion of any Thing so done as aforesaid; the same to be recovered in any of the Courts of Record in this Province, by Action of Debt, or in any other way, and Manner, according to the known and Established Practice of the Court in which such Action shall be brought.

Proviso not to extend to any of the Powers in the Commission of the Peace;

Provided always, That nothing contained in this Ordinance shall extend, or be construed to extend, to take away, determine, or abridge any of the Powers given and granted to any Justice or Justices of the Peace for this Province, by Virtue of His Majesty's Commission of the Peace to them directed, or to restrain or hinder them in the exercise of any other Powers to them limited and appointed by any other Ordinance or Ordinances, save and except such as relate to the Administration of Justice in Matters of private Property, between Party and Party only: but such Justice or Justices of the Peace is and are hereby further authorized and required to do and execute all and every matter or Thing to him or them enjoined by Virtue of the said Commission of the Peace, and also to hear and determine all Penalties and Forfeitures arising from the Breach of any Ordinance or Ordinances, and to proceed therein in the same Manner as he or they would have done if this Ordinance had not been made.

nor to any Judgment already pronounced and not executed; nor to any Writ of Execution already issued, and not returned,

but the same to be perfected as if this Ordinance had not been made.

And provided also, That nothing herein contained shall extend, or be construed to extend to reverse, alter, or suspend any Judgment or Judgments already pronounced or given by any Justice or Justices of the Peace, upon which no execution has yet been Awarded; or to supersede, vacate, alter, or suspend any Writ or Writs of Execution already awarded, and not yet returned; but the said Justice or Justices of the Peace is and are hereby further authorized and required to award Execution upon such Judgments already pronounced and given, and the Provost Marshal is hereby authorized and required to enforce the same, and also to proceed upon such Writs of execution as are already awarded and not yet returned, and to levy the Debt and Costs and make such Return to the Justice or Justices awarding the same, as he would have done before the Publication of this Ordinance.

Preamble to the Clause for erecting a new Jurisdiction.

And whereas the providing an Easy, plain, and summary Method of Proceeding for the Recovery of small Debts, with a due Regard at the same Time to a certain Degree of Solemnity and Deliberation, which ought ever to accompany the Administration of Public Justice, very much contributes to promote Industry, and to support and Encourage useful Credit:

All Disputes for Sums not exceeding £12 to be heard before the Judges of the Courts of Common Pleas only, except as after excepted.

It is therefore ordained and declared by the Authority aforesaid, That from and after the Day of the Date of the Publication aforesaid, all Manner of Disputes and Differences between Party and Party for any Sum not exceeding Twelve Pounds Currency of this Province, except as is hereinafter excepted, shall be heard, tried, and adjudged before the Judges of the Courts of Common Pleas for the Time being only, who are hereby authorized and required to take Cognizance thereof, and the same to hear, adjudge and finally determine as to them shall seem just in Law and Equity, any Ordinance or Ordinances, or any Clause, Matter or Thing in them or any of them contained, to the contrary hereof in any wise notwithstanding.

Preamble to the Clause for fixing the Court of Common Pleas at Montreal.

And whereas some Inconveniences have arisen from the present Practice of adjourning the Court of Common Pleas from Quebec to Montreal, and from the want of a fixed, settled, and Established Court for the hearing and determining all matters arising within the District of Montreal, before Judges specially appointed for that District, and constantly residing within the same;

Court of Common Pleas at Montreal constituted an Independant Court, with original Jurisdiction,

in all Matters arising within the District of Montreal,

in the same manner as the Court of Common Pleas in Quebec, in all matters arising within the District of Quebec.

It is further Ordained and Declared, by the Authority aforesaid, That from and after the Day of the Date of the Publication of this Ordinance, the Court of Common Pleas, heretofore held by Adjournment at different Days and Times in the Town of Montreal, and considered and taken to be a Part or Member of the Court of Common Pleas established at Quebec, shall be, and it is hereby constituted a Court of Record, with Original Jurisdiction of its own, independent of, and no wise connected with the Court of Common Pleas established at Quebec, which Court of Common Pleas for the District of Montreal shall, for the future, be held before Judges constantly residing within the said Town of Montreal, who shall have the same Power and Authority, and the same is hereby given and granted to them to hear and determine within the District of Montreal, and to award Execution, and to do and execute all and every Matter or Thing touching the Administration of Justice, in as full and ample a manner as is now or has at any Time been used, practised, or done by the Court of Common Pleas established at Quebec, in and for the District of Quebec: And that from and after the Day of the Date of the Publication aforesaid the said Court of Common Pleas in the Town of Quebec, and the said Court of Common Pleas in the Town of Montreal, shall be taken and adjudged to have each their separate Jurisdictions, independent of and unconnected with each other, that is to say, the said Court of Common Pleas at Quebec, in and over all matters and Things arising within the District of Quebec, and the Court of Common Pleas at Montreal in and over all matters and Things arising within the District of Montreal.

Proviso, that both Courts shall have a concurrent Jurisdiction in awarding Writs of Execution.

Where the Defendant has no Lands or Goods within the District where the

Provided always, and it is hereby further Ordained and Declared by the Authority aforesaid, that from and after the Day of the Date of the Publication aforesaid, where any Person or Persons, against whom Judgment shall be obtained, in either of the said Courts of Common Pleas, shall not have any Lands, Goods, or Effects, wherewith to satisfy the said Judgment within the Jurisdiction of that Court wherein such Judgment shall have been obtained, but such Person or Persons shall have Lands, Goods, or Effects, within the Jurisdiction of the other Court of Common Pleas, that then and in that Case it shall and may be lawful for the Judge or Judges of the Court of the District in which such Judgment shall have been obtained to award Execution to the Provost Marshal of the District in which such Lands,

Cause was tried,

Execution may be awarded into the other District;

And the Return must be made by the Provost Marshal, in the Court from whence it was originally awarded;

but it need not be made in Person.

Goods, or Effects shall be found, who shall, before he proceeds to do anything therein, carry the said Writ of Execution to one of the Judges of the Court of the District in which such Lands, Goods, or Effects shall be found, who is hereby authorized and required to endorse the same; which Writ of Execution, being so indorsed as aforesaid, the said Provost Marshal of the District in which such Lands, Goods, or Effects shall be found, shall proceed to levy the Debt and Costs, and make Return thereof, under his Hand and Seal, to the Judge or Judges of the Court from whence such Writ of Execution was originally awarded; and such Writ of Execution, together with the Return thereof, under the Hand and Seal of the Provost Marshal subscribing the same, shall be by him conveyed, so soon after the making and signing thereof, as conveniently may be, to the Provost Marshal of the District from whence such Writ was originally awarded, who is hereby authorized and required to deliver the same into the Court of Common Pleas from whence such Writ was originally awarded, on the First Court Day next after the coming of the said Writ and Return into his Hands; and the Judge or Judges of the said Court of Common Pleas, by whom such Writ of Execution was originally awarded, are hereby authorized and required to receive the same; and the same shall be as valid and effectual, to all Intents and Purposes, as if the Provost Marshall making and subscribing the same had himself been present, and delivered the same into the Court with his own Hands.

The Provost Marshal executing the Writ, only answerable before the Court of the District which awarded the Same.

Provided nevertheless, That the Provost Marshall executing the said Writ, and making Return thereof as aforesaid, only shall be answerable as well for the Truth of the said Return, as for any Misbehaviour, Omission, or Neglect in the manner of executing the said Writ, or making Return thereof before the Judge or Judges of the Court from whence such Writ of execution was originally awarded, and not before the Judge or Judges of the Court of the District to which he belongs:—And in case any Person or Persons against whom such Judgment as aforesaid shall be obtained, not having any Lands, Goods, or Effects within the Province, wherewith to satisfy the said Judgment, shall usually reside without the Jurisdiction of the Court in which such Judgment shall be obtained, or being, at the Time of obtaining the said Judgment, resident within the same, shall alter his or their place of Residence, and withdraw his or their Person, or Persons from the Jurisdiction of the Court in which such Judgment shall have been obtained, it shall and may be lawful for the Judge or Judges of the said Court in which such Judgment shall have been obtained, in all cases where such Writ may legally issue, to award a Writ or Writs of Capias ad Satisfaciendum to the Provost Marshal of the District in which such Person or Persons shall reside or be found, which Writ or Writs, being so indorsed as aforesaid, the said Provost Marshal of the District in which such Person or Persons shall reside or be found, shall proceed to execute the same, and to arrest the Body or Bodies of such Person or Persons, and him or them to convey to the Common Gaol of the District in which such Person or Persons shall be arrested, there to remain till the Debt and Costs are paid, or he or they be otherwise delivered by due Course of Law.

The same in Writs of Capias ad Satisfaciendum,

and the Defendant to be conveyed to the Gaol of the District in which he is arrested.

Preamble to the Clause for keeping the Courts open throughout the year.

And in order to avoid the Delays and Inconveniences occasioned by the present practice of holding the said Courts of Common Pleas at certain fixed Times and Periods, according to the Directions of the aforesaid Ordinance of September One thousand, seven hundred and sixty-four, and to the Intent that the Judges of the said Courts may be enabled to give more speedy and effectual Relief in all Cases, as well where the matter or Thing in Demand shall exceed the Sum of Twelve Pounds, and where it falls short of or is equal to it; it is further Ordained and Declared by the Authority aforesaid—That from and after the Day of the Date of the

Courts to sit all the Year,

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Publication of this Ordinance, the said Courts of Common Pleas, as well at Quebec, as at Montreal, shall be constantly open to the Suitor, and they are hereby required to be kept open at all times throughout the Year, except on Sundays, and at Seed time, a Month at Harvest, and a Fortnight at Christmas and Easter, and except during such Vacation as shall be from Time to Time appointed by the Judges for making their respective Circuits throughout the Province, Twice in every Year: and the Judges of the said Courts are hereby authorized and required to issue their Process, and to do and execute all and every other Matter or Thing touching the Administration of Justice, without Regard to Terms or any stated Periods of Time, as Limited and appointed by the Ordinance of September, one thousand seven hundred and sixty-four, or any other Ordinance, custom or usage whatsoever, all and every of which Ordinance, or Ordinances, so far as they relate to the Sitting of the said Courts, or prescribe any Limitations of Time for that Purpose, are hereby annulled, revoked, and made Void, in as full and ample a manner as if they were herein particularly enumerated and set forth.

except Sundays, and other times of Vacation,

Without Regard to Terms, as appointed by the Ordinance of September 1764, or any other ordinances; all which, as far as they relate to the Sitting of the Said Courts, are repealed.

Provided always, and it is further Ordained and Declared by the Authority aforesaid, That the Judges of the said Courts of Common Pleas, as well in Quebec as in Montreal, shall appoint One Day in every week (except Sunday, or in such Vacation as aforesaid) at their Discretion for the hearing and determining all matters wherein the Cause of Action shall exceed the Sum of Twelve Pounds, which Day shall be declared at the rising of the Court on the Court day next preceding; and no Adjournment of the Court shall be made for any longer time than One Week, upon any Pretence or Ground whatsoever.

The Judges to sit one day in every week at their Discretion for matters above £12.;

Provided also, That Friday in every week, except it be in such Vacation as aforesaid, shall be always a Court Day, as well in the Town of Quebec as Montreal, for the hearing and determining all Matters wherein the Cause of Action shall not exceed the Sum of Twelve Pounds as aforesaid; on which Day one of the Judges of the said Courts of Common Pleas shall attend, as well at Quebec as at Montreal, for the Dispatch of Business, who is hereby authorized and required to proceed to hear and determine all matters where the Cause of Action shall not exceed the Sum of Twelve Pounds, in the Absence of the other Judge—such Judge being prevented from attending by Sickness, or any other Lawful and reasonable Cause of Excuse; and every Judgment, sentence, Order or Decree, given, made or pronounced, and every Writ of Execution awarded by such Judge, in Matters where the Cause of Action shall not exceed the Sum of Twelve Pounds as aforesaid, shall be in all Respects as binding and valid as if both the Judges of the said Court had been present and concurred in giving, making or pronouncing such Judgment, or in awarding such Writ of Execution.

and on every Friday, except in Vacation for matters not exceeding £12,

One Judge sufficient in Matters not exceeding £12, the other having a reasonable Cause of Absence.

And, to the Intent that this Part of the Jurisdiction of the said Courts of Common Pleas, which attaches upon matters where the Value of the Thing in Demand does not exceed the Sum of Twelve Pounds, and the manner and Form of proceeding therein may be clearly comprehended, so as to enable the Party, either by himself or his Agent, to Prosecute his own means of Redress with Dispatch, certainty, and Moderation in Point of Expence; It is further Ordained and Declared by the Authority aforesaid, That from and after the Day of the Date of the Publication aforesaid, in all Matters where the Cause of Action shall not exceed the Sum of Twelve Pounds Currency, no Process whatsoever shall issue against any Defendant or Defendants, until the Plaintiff or Plaintiffs, or his, her or their Agent or Agents shall have first produced and left with, or being unable to write or read, shall have first procured, from the Clerk of the Court in which such Action is intended to be brought, who is hereby ordered and required to make out

No Process to issue against any Defendant till the Plaintiff has filed his Declaration.

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the same, a Declaration either in English or French Language, according to the following Form.

Form of Declaration.

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	A B – Plaintiff	
	C.D – Defendant	

The Plaintiff demands of the Defendant the Sum of due to the Plaintiff from the Defendant, for which Said Sum, though Often demanded, still remains due; therefore the Plaintiff demands Judgment.

Manner of taking out the Summons, and attesting the same.

Which Declaration, being so produced to and left with, or so as aforesaid made out by the Clerk of the Court in which such Action is intended to be brought, shall be filed by the Said Clerk with the other Records of the Court, and the said Clerk shall immediately make out an attested Copy thereof, and upon the back of such Copy Indorse a Summons, to which he shall procure the name of One of the Judges of the said Court to be set, commanding the Defendant either to pay the Debt and Costs to the Plaintiff, or else to appear upon some subsequent Court Day, according to the Discretion of the Judge who signs the same, Regard being had to the Distance of the Defendant's Place of Residence, and the means of Communication therewith, which Summons shall be in the following Form.

Form of the Summons.—

To C. D. the Defendant in this Action.

You are hereby commanded and required to pay to the Plaintiff the within named Sum of together with Costs, or else to be and appear, either in Person, or by your Agent, before me at the Court House of the Town of Quebec/Montreal together with your Witnesses, if any you have, on Day of on which Day the Matter of Complaint against you, as contained in the within Declaration, will be heard and finally determined, otherwise Judgment will be given against you, by Default in this Action.

E. F. Judge of the Court of Common Pleas.

Fees for the same.

And this Attested Copy of the Declaration, together with the Writ of Summons, indorsed and signed as aforesaid (for all which the Clerk of the said Court shall receive from the Plaintiff the Sum of Six Pence, and no more, where the Original Declaration shall be produced and delivered to him, and the Sum of one shilling, and no more where he shall make out the Original Declaration himself, at the Request of the Party) shall be delivered to the Plaintiff or Plaintiffs, or his, her or their Agent or Agents, who shall convey, or cause the same to be conveyed, to One of the Bailiffs of the Parish in which such Defendant resides, who is hereby authorized and required to serve the same upon the Defendant personally, if he can be found, or otherwise upon his Wife, Son, Daughter, Servant, or some other grown Person, at his the said Defendant's Dwelling House, or usual Place of Abode, and at the same Time to shew him, her, or them the attested Copy of the Declaration, together with the Writ of Summons annexed, under the Hand of the Judge issuing the same, and to acquaint him, her or them, with the Contents thereof, and to leave a Copy of the same at the said House; and the Bailiff serving such Process as aforesaid, is hereby further authorized and required to attest the said Service at the Foot of the said Writ of Summons, together with the Day and Time of serving the same, according to the following Form:

Manner of serving the same.

Manner in which it Shall be attested by the Bailiff.

Form of Attestation of the Service.

I. G. H. Bailiff of the Parish of did on Day of Personally serve the within-named Defendant with the Copy of the Declaration, and Writ of Summons annexed, by shewing him the

same, and acquainting him with the Contents thereof, and by leaving a Copy of the same at his House, with the of the said Defendant, such being of the age of or thereabouts.

Shall be delivered to the Plaintiff, if Personally demanded. Fee of one Shilling to the Bailiff, to be allowed in Costs, otherwise to be returned by the Bailiff, who shall be allowed the Charges.

And this Copy of the Declaration, with the Writ of Summons annexed, and the Certificate of the Service so made by the Bailiff, shall be delivered by him to the Plaintiff, if thereto personally required by the Plaintiff himself, who shall pay the Bailiff, for the Service and Attestation as aforesaid, the Sum of one Shilling, and no more, which Sum of one Shilling, together with the Charges of issuing and returning the said Process, shall be allowed him in his Costs, in Case he shall obtain Judgment against the said Defendant in the Action; but in case the said Plaintiff shall not personally demand the Custody of the said Process, after such Service and Attestation as aforesaid, that then the Bailiff so serving and attesting the same shall forthwith return the same to the Court of Common Pleas from whence such Process issued, who shall direct the Costs of returning the same, together with the Fee of one Shilling for the Service and Attestation thereof, to be paid to the said Bailiff by the Defendant, if he shall be condemned in the Suit, or by the Plaintiff, if he shall discontinue the Action, or otherwise fail in the Proof of the Matter contained in his Declaration.

Defendant not appearing after Service of the Declaration and Summons, Cause to be heard on the part of the Plaintiff only.

And it is further ordained and Declared, by the Authority aforesaid, That if any Defendant, after having been duly summoned as aforesaid, shall refuse to pay the said Debt and Costs, and shall not appear, either by himself or Agent, before the Court, at the Time and Place mentioned in the said Writ of Summons, it shall and may be Lawful for the Judge or Judges of the said Court, upon view of the Certificate of the said Bailiff as aforesaid, or other due Proof of the Service of the said Writ of Summons in Manner aforesaid, to hear the Cause on the Part of the Plaintiff or Plaintiffs only and to make such Order, Decree, or Judgment, and to award such reasonable Costs of Suit, as to him or them shall seem most agreeable to Equity and good Conscience: And if upon the Day of Return of such Writ, or on such other Day, as shall be specially appointed by the Court for the hearing of the Cause, the Defendant so summoned as aforesaid shall appear, either by himself, or his Agent, and the Plaintiff shall not appear, either by himself or his Agent, or appearing shall not Prosecute, or Prosecuting shall fail in the Proof of the Matter contained in his Declaration, that then upon due Proof that such Defendant was served with such Process, it shall and may be Lawful for the Judge or Judges of the said Court to dismiss the said Defendant, and decree and award him such Costs as in his or their Discretion shall seem meet, and to award Execution against the said Plaintiff for Recovery and levying thereof, in the same manner as other Executions are hereby directed to be awarded against the Defendant, where the Plaintiff shall obtain Judgment in the Action.

Plaintiff not appearing, or appearing and not Prosecuting or failing in Proof of the Debt, Defendant shall be dismissed and the Plaintiff Condemned in Costs.

Execution not to be awarded, till the Court Day next after Giving Judgment, except the Defendant is about to leave the District; on which day Execution Shall be awarded to the Bailiff of the Parish where the Defendant resides, or to some other Discreet Person residing in or near the Same;

Provided always, and it is hereby further Ordained and Declared by the Authority aforesaid, That no Execution shall be awarded against any Defendant until the next Court day after that on which Judgment shall be given in the Cause, to the Intent that the Party may have time to satisfy such Judgment by paying the Debt and Costs into the Hands of the Plaintiff or Plaintiffs, or his, her, or their Agent, or to the Clerk of the Court, who is hereby Authorized and required to receive the same for his, her, or their Use, unless it shall be made appear to the Judge or Judges pronouncing such Judgment that the Defendant or Defendants is or are preparing to leave the District, or otherwise to defeat the Plaintiff of the Effect of his, her, or their Judgment, in which case it shall and may be Lawful for the Judge or Judges pronouncing the said Judgment to award execution immediately; But in Default of such Payment as aforesaid, that then it shall and may be Lawful for the Judge or Judges giving such Judgment, on the Friday next ensuing the said Judgment, to award the Execution

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to be levied out of the Defendant's Goods and Chattels only. Beasts of the Plough, Implements of Husbandry, Tools of Trade, and one Bed and Bedding, not to be Sold, unless there are no other Goods, and even then the Bed and Bedding not to be Sold.

Bailiff to give notice for Two Sundays before he proceeds to the Sale of the Defendant's Goods.

Other Directions touching the Sale.

If Defendant's Goods & Chattels not sufficient to satisfy the Execution, Bailiff to enquire of his Lands,

And to return the Quantity and Condition of them, whether Arable or Grass Land usually reserved for Hay;

If any Such, the Court to issue another Writ, directing the Bailiff to enter upon the Lands at the time of reaping or mowing, and to set apart so much as will be Sufficient to Satisfy the Debt & Costs; and to sell the same upon the Land, returning the Overplus.

under his or their Hand and Seal, directed to the Head Bailiff of the Parish wherein the Defendant resides, or to some other discreet Person dwelling in or near the said Parish, whom the Judge or Judges shall think proper to name for that Purpose, and which he or they are hereby authorized and impowered to do, commanding him to levy the Debt and Costs, together with his Fees for levying and returning the said Writ (which Fee shall be expressed in the Warrant of Execution) out of the Goods and Chattels belonging to such Defendant only, with an Express exception nevertheless therein contained to his, the Party's, Beasts of the Plough, Implements of Husbandry, Tools of his Trade, and one Bed and Bedding, unless the other Goods and Chattels of such Defendant or Defendants shall prove insufficient, in which case such Beasts of the Plough, Implements of Husbandry, and Tools of his Trade, shall be sold, but not the Bed and Bedding; and the said Bailiff or other Person, to whom such Writ of Execution shall be awarded as aforesaid, shall, before he proceeds to do any Thing therein, give Notice at the Church Door of the Parish wherein such Writ is intended to be executed, immediately after Divine Service, both Morning and Evening, on Two successive Sundays next after the coming of the said Writ, of the Day and Time appointed for the Sale of the Defendant's Goods, on which Day he shall proceed to sell the same to the highest Bidder, and for the most Money he can get, till he shall have raised sufficient to discharge the Whole of the said Writ of Execution, after which, if any Goods remain in Execution, the same shall be immediately restored to the Defendant; and in case the Defendant or Defendants against whom such Writ of Execution as aforesaid shall be awarded, shall not have Goods or Chattels sufficient to satisfy the said Writ of Execution, either in the whole or in Part, that then the Bailiff, or other Person as aforesaid authorized, shall enquire whether the said Defendant or Defendants hath or have any Lands in his or their Possession or Occupation, or in the Hands of any other Person in Trust for him or them, lying within the Parish wherein such Defendant or Defendants shall reside, or elsewhere within the Jurisdiction of the Court from whence such Writ of Execution shall be awarded; and if the Bailiff, or other Person so as aforesaid authorized, shall be fully informed and satisfied that such Defendant or Defendants hath or have any Lands as aforesaid, such Bailiff, or other Person so as aforesaid authorized, is hereby required to make Return thereof upon the Back of the Writ, specifying the extent and Quality of the same, and particularly if any Part thereof be Land usually sowed with Corn, or Meadow Land reserved for Hay, and upon such Return it shall and may be Lawful for the Judge or Judges of the Court from whence such Writ issued, to issue another Writ to the Bailiff of the Parish in which such Lands lie, or to some other discreet Person, residing in or near the same, commanding him to enter upon such Arable or Meadow Land belonging to such Defendant or Defendants, at the proper Season, immediately after the reaping or mowing the same, and before any Part of the Produce thereof shall be removed and carried off, and of such Produce, whether of Corn or Hay, to set apart so much as in his Discretion he shall think sufficient to discharge the whole of the Writ so to him directed, and the same to sell upon the Land for the most Money that he can get, leaving the overplus, if any there be, upon the Land, for the use of the Defendant or Defendants.

Penalty for obstructing the Bailiff in the Execution of his Writ.

And it is further Ordained and Declared by the Authority aforesaid, that if any Defendant or Defendants, or any Person or Persons by his or their Direction, after Notice to him or them of the coming of such Bailiff or other Person as aforesaid upon the Land (which Notice he is hereby required to give) shall make any Resistance, or prevent his coming upon the Land to execute the Writ, or otherwise disturb him in the execution of it, or shall remove or carry away all or any of the parcels of Corn or Hay, so as aforesaid

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set off, without having first satisfied the Whole of the said Writ of Execution, he or they so offending shall pay and forfeit, over and above the Sum so commanded to be levied, the Sum of Ten Pounds Currency of this Province, to be recovered in a Summary way, before one of the Judges of the Court issuing the said Writ of Execution, by the Person against whom such Offence shall have been committed, or any other Person who shall sue for the same.

Judges impowered to order the Debt to be levied by Installments.

Provided also, and it is hereby further Ordained and Declared, by the Authority aforesaid, That it shall and may be Lawful for any Judge or Judges issuing any Writ of Execution in Matters where the Cause of Action shall not exceed the Sum of Twelve Pounds as aforesaid, upon due Proof before him or them made of the distressed Circumstances of the Defendant or Defendants in the Action to indorse upon the same his or their Order to the Bailiff, or other Person as aforesaid, commanding him to levy and raise the same by Installments, in such Proportions, and at such Days and Times as to him or them shall seem meet.

so as the whole Time does not exceed Three Months from the time of awarding the Writ of Execution.

If the Defendant convey away or secretes his Effects, Court may award a Writ of Capias ad Satisfaciendum.

Provided nevertheless, That the whole of the Time so allowed, and given, shall not exceed the Space of Three months from the day of the Date of issuing such Writ of Execution; and provided also, that if it shall appear, upon due Proof thereof made before such Judge or Judges issuing such Execution as aforesaid, that the Defendant or Defendants hath, or have, at any Time after the Service of the Declaration and Writ of Summons as aforesaid, conveyed away or secreted all or any Part of his or their Goods, or Effects, in order to defeat the Plaintiff or Plaintiffs of his, her, or their Demand, that then and in such Case it shall and may be lawful to and for the said Judge or Judges immediately to award a Writ of Execution against the Body or Bodies of the said Defendant or Defendants, directed to the Bailiff or other Person as aforesaid, commanding him to arrest the said Defendant or Defendants, and him or them to convey to the Common Gaol of the District, there to remain till such Debt and Costs be fully satisfied, or other Order be made by the said Court for his or their Deliverance.

Preamble to the Clause for impowering Justices to determine matters to the Value of £3.

And whereas it may be of still further Utility and Convenience, and the means of extending the Benefit of these Regulations more generally throughout the Province, to constitute and appoint other Jurisdictions, by which Disputes of a still inferior Nature may be terminated, as well in the Towns of Quebec and Montreal, as in other parts of the Province remote from the Courts of Justice; It is further Ordained and Declared by the Authority aforesaid, That it shall and may be lawful to and for any Person or Persons as well within the Towns of Quebec and Montreal, as in other remote Parts of the Province, being thereto specially appointed by Commission under the Hand and Seal of the Governor, or Commander in Chief for the Time being, to hear and determine, and also to award Execution, in all Causes where the matter in Question shall not exceed the Sum of Three Pounds, Current money of this Province, so as the Title of Lands be not drawn in Question in any such Proceedings, in as full and ample manner as any Judge or Judges of either of the Courts of Common Pleas are hereby authorized and impowered to do in Matters where the Cause of Action shall not exceed the Sum of Twelve Pounds as aforesaid, any Thing to the Contrary hereof in this Ordinance notwithstanding; and the Person or Persons so as aforesaid appointed by Commission, as well in the Towns of Quebec and Montreal, as elsewhere within the Province, are hereby authorized and commanded, in the Execution of the Powers to them entrusted of hearing, determining, and awarding as aforesaid, to keep and observe all the Rules, and Regulations herein prescribed, limited, and directed, to the Judge or Judges of the Courts of Common Pleas, in the Exercise of their Jurisdiction, in matters where the Cause of Action shall not exceed the Sum of Twelve Pounds, and to conform

Their Authority under Special Commission.

Titles of Lands not to be drawn in Question in their Proceedings.

Persons so authorized by Commission to observe the same Forms in their Proceedings as the Judges of the Courts of Common Pleas in

Causes not exceeding £12.

to the same, both in their Judgments and Process, as fully and perfectly as if the same were herein particularly set forth at large and enjoined; and all Bailiffs of Parishes, or other Persons to whom any Writs of Summons, Warrants of Execution, or any other Process whatsoever, in matters where the Cause of Action shall not exceed the Sum of Three Pounds as aforesaid, shall be directed by any Person or Persons so appointed, as aforesaid, are hereby authorized and required to pay due Obedience to the same, and cause the same to be executed, and Returns thereof to be made to the Person or Persons so appointed, issuing the same as they would do or make to any Judge or Judges, of the Courts of Common Pleas, if such Process had issued from him or them; provided that Such Person or Persons as shall be appointed for this purpose within the Towns of Quebec and Montreal shall not sit or hold any Court for the hearing and determining Matters within their Jurisdiction on any Friday, but on some other Day in every Week, according to their Discretion other than Friday, or in such Vacation as aforesaid.

Bailiffs & other Persons required to pay due Obedience to their Process.

Not to sit on any Friday, but on some other Day in every Week.

Preamble to the Clause for altering the present Method of selling Real Property under Executions.

And whereas great and manifold Inconveniences and Losses have arisen to the Proprietors of Real Estates in this Province, by having their Houses and Lands taken in Execution and exposed to sale for the Payment of small Debts, and also from the hasty and informal method of setting the same to sale, even in cases where the extent of the Judgment will admit of no other satisfaction;

No Execution against Houses or Lands where the Cause of Action does not exceed £12.

It is further Ordained and Declared by the Authority aforesaid, That from and after the Day of the Date of the Publication of this Ordinance, no Process whatsoever shall be awarded for the sale of any House or Houses, Land or Lands, Tenement or Tenements, upon any Judgment or Judgments, where the Original Cause of Action shall not exceed the Sum of Twelve Pounds Current Money of this Province; and that from and after the Day of the Date of the Publication aforesaid, no Houses, Lands, or Tenements, taken in Execution upon any Judgment or Judgments obtained in His Majesty's Supreme Court of Judicature for this Province, or upon any Judgment or Judgments obtained out of the Courts of Common Pleas in Quebec or Montreal, shall be extended or sold by the Provost Marshal, or any Person whatsoever, unless the Personal Property of the Defendant or Defendants in the Action shall be found insufficient.

Nor any House or Land to be Sold but in Default of Personal Property.

Direction to the Provost Marshal touching the Sale of Real Estates.

And it is further ordained and Declared by the Authority aforesaid, That upon the issuing of any Writ of Execution for the sale of any Houses or Lands, or so soon after as may be, the Provost Marshal of the District in which such Houses or Lands shall lie or be shall cause the same to be advertized in the Quebec Gazette, both in English and French, and therein set forth, as near as may be, the Quantity and Condition of such Houses and Lands, together with the Terms and the Day of Sale, which Day of sale shall not be till Six Months after such Publication, and at the same Time, or so soon after as conveniently may be, he shall also cause a true Copy of the said Advertisement, both in English and French to be sent to the Head Bailiff of the Parish where such Houses or Lands shall lie or be, who is hereby ordered and required to fix the same upon the Door of such Parish Church, and to re-place the same, so often as it shall be removed, defaced, or rendered illegible by Time or Accident, and also to publish and declare the Contents thereof every Sunday at the Door of the said Church immediately after Divine Service, both in the Morning and Afternoon, that the same may be fully known and understood by the Inhabitants thereof, for which the said Bailiff shall receive, out of the Produce arising from the Sale, the Sum of One Spanish Dollar, to be paid by the Provost Marshal and allowed in his Accounts.

Notice

No Sale till Six months after Notice.

Bailiff to publish the Sale also.

Fees of the Bailiff for such Publication.

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All Estates bound from the Day of the Judgment;

Provided always, and it is hereby, and by the Authority aforesaid, further Ordained and Declared, That from and after the Day of the Date of the Publication aforesaid, all Houses and Lands against which any Writ or Writs of Execution shall be awarded for the sale of the same, shall be taken to be, and they are hereby, and by the Authority aforesaid, declared to be obliged and bound in Law to pay and satisfy all and every Judgment or Judgments, which shall and may be obtained against the Owner and Proprietors thereof, from the Day on which such Judgment or Judgments shall be pronounced or given; and that no Mortgage, Sale, or Assignment, or any Deed of Conveyance, or any Disposition without Deed whatsoever, howsoever, or to whomsoever, made after the Day on which such Judgment or Judgments shall be pronounced or given as aforesaid, shall defeat, avoid, suspend, or delay the Force and Operation of such Judgment or Judgments; but all and every such Mortgage, Sale, Assignment, Deed, and Disposition, shall be taken to be, and all and every of them are and is hereby declared to be fraudulent, as against the said Judgment, Creditor or Creditors, and to have no Validity, Power, Operation, or Effect whatsoever, to the Prejudice of such Judgment Creditor or Creditors.

And no Conveyance or Disposition good after the Date of Such Judgment.

Judges to mark on the Writ of Execution the Day of signing the Judgment;

And lastly, It is further Ordained and Declared by the Authority aforesaid; That all Judges and other Persons authorized to administer Justice, issuing any Writ of Execution, as well where the Cause of Action shall exceed the Sum of Twelve Pounds as aforesaid, as where it falls short of, or is equal to that Sum, shall and they are hereby authorized and required to mark upon such Writ of Execution the Day on which Judgment was given in the Cause, and if Two or more Writs of Execution shall be issued upon Judgment given the same day, against the same Defendant or Defendants, and so marked upon the Writs, such Execution shall have the same Privilege, and be satisfied in the same Proportions, and the Provost Marshal, Bailiff, or other Person, to whom such Writs of Execution shall be Awarded, receiving the same, is hereby authorized and commanded, after the sale of the whole of such Defendanc or Defendants Real and Personal Estate, where the Said Writs shall be awarded against both, in case the same should not be sufficient to satisfy the whole of the said Judgments, to pay over and divide the Neat Produce of such Sale or Sales, after deducting his own Costs and Charges, amongst the several Plaintiffs, in Proportion to the Amount of their respective Judgments.

And in Case of Two or more Executions against the Same Defendant on the Same Day, to be Satisfied in equal Proportions.

(Signed) GUY CARLETON

Given by His Excellency Guy Carleton, Captain General and Governor in Chief in and over the Province of Quebec, Vice Admiral of the same, and Brigadier General of His Majesty's Forces, &c &c in Council, at the Castle of St. Lewis, in the City of Quebec, in the said Province, and passed under the Great Seal of the Said Province, on the First Day of February, in the Tenth Year of His Majesty's Reign, and in the Year of Our Lord One Thousand Seven hundred and Seventy.
By His Excellency's Command

(signed) GEO: ALLSOPP
D. C. C.

CSL

PETITION FOR A GENERAL ASSEMBLY[1].

To the King's most Excellent Majesty.

The humble Petition of Your Majesty's most dutiful and Loyal Subjects the British Freeholders, Merchants and Traders in the Province of Quebec in behalf of themselves and others.

Sheweth,

That induced by Your Majesty's paternal care for the security of the Liberties and Properties of your Subjects, and encouraged by Your Royal Proclamation of the Seventh of October in the third year of your Reign, "That you had been graciously pleased to give direction to Your Governors "of Your Majesty's new Governments, that so soon as the state and circum- "stances thereof would admit, they should with the advice of the members "of Your Majesty's Council call General Assemblies within the said Gov- "ernments respectively, in such manner as is used in those Provinces in "America under Your Majesty's immediate government."[2]

Your Petitioners most humbly implore Your Majesty's gracious attention to their supplications, confiding as they do in your Royal goodness, that only to point out in general the present state and circumstances of this Province, is to obtain the Royal Mandate for calling a General Assembly within the same, which operating with Your Majesty's gracious intention for the good and welfare of your People, will strengthen the hands of Government, give encouragement and protection to Agriculture and Commerce, encrease the Publick Revenues, and we trust, will in time under Your Majesty's Royal influence be the happy means of uniting your new subjects in a due conformity and attachment to the British Laws and Constitution and rendering the conquest of this extensive and populous country truly glorious.

That as the great Source of the wealth and riches of a country principally consists in the numbers of its Inhabitants usefully employed, Your Petitioners cannot but lament that the great numbers of your Majesty's new Subjects in this Province for want of such publick encouragement as an Assembly only can properly give to improve its natural advantages, have hitherto proved rather a burthen than any benefit to themselves or advantage to the community; their extreme poverty and misery increasing with their numbers.

That Your Majesty's British Subjects residing in this Province have set examples and given every encouragement in their power to promote Industry, are the principal Importers of British Manufactures, carry on three fourths of the Trade of this Country, annually return a considerable Revenue into Your Majesty's Exchequer in Great Britain; and though the great advantages this Country is naturally capable of are many and obvious for promotting the Trade and Manufactures of the Mother Country, yet for some time past, both its Landed and Commercial Interests have been declining, and if a General Assembly is not soon order'd by Your Majesty to make and enforce due obedience to Laws for encouraging Agriculture, regulating the Trade, discouraging such Importations from the other Colonies as impoverish the Province, Your Petitioners have the greatest reason to apprehend their own ruin as well as that of the Province in general.

That there is now a sufficient number of Your Majesty's Protestant Subjects residing in and possessed of real property in this Province, and who are

[1] Canadian Archives, Q 7, p. 359. The date of the petition is not given, but it would appear to be some time in 1770.

[2] See Proclamation of October 7, 1763, p. 120.

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otherwise qualified to be Members of a General Assembly.

Your Petitioners therefore most humbly supplicate Your Majesty, That You will be graciously pleased to give direction to Your Governor of this Province to call a General Assembly[1] within the same, to meet at the City of Quebec, in such manner as is used in those Provinces in America under Your Majesty's immediate Government.

And Your Petitioners as in duty bound shall ever pray.

Henry Taylor
Jas. Sinclair
Alex^r Henry
George King
Lauch^n Smith
Jonas Clarke Minot
Jn. Porteous
James McGill
Geo. Gregory
Alex^r Paterson
Lawrence Ermatinger
Rich^d. Dobie
John Aitkin

Simon Fraser
John Fine
J. Fraser
Murd. Stuart
Aaron Hart
Edw^d Harrison
James Stanley Goddard
J^no Paterson
Isaac Todd
Alex^r Martin

Cha^s Grant
John Lees
Zach. Macaulay
John M^cCord
P. Fargues
John Renaud
Abraham Ogier
J^no Durss.

PETITION FOR THE RESTORATION OF FRENCH LAW AND CUSTOM.[2]

AU ROY

TRÈS GRACIEUX SOUVERAIN

PLAISE À VOTRE MAJESTÉ.

VOS TRÈS HUMBLES & très Soumis Sujets Les Canadians de votre Province de Quebec osent S'addresser a Votre Majesté avec le plus profond Respect et cette ferme Confiance que leur inspirent votre bonté paternelle pour tous vos fidels Sujets en général & Les faveurs dont Votre Majesté a Jusqu'icy prevenue Ses nouveaux Sujets Canadiens qui en conserveront à jamais le Souvenir et La plus parfaite reconnoissance.

Depuis l'Instant, Sire, de L'union de cette Province aux Domaines de Votre Couronne, vos très humbles Sujets ont pris la Liberté de vous répré-senter plusieurs fois, de quelle importance il étoit pour leurs interrêts d'être Jugeés et Gouvernées Suivant les Loix, Coutumes, & Ordonnances, Sous Lesquels Ils sont nés, qui servent de Baze et de fondements à Leurs possessions et font La règle de Leurs familles, et combien il leur estoit à la fois desagréable, & humilliant d'être Exclus des places qu'ils pourroient remplir dans cette Province pour le Service de Votre Majesté et le Soulage-ment de Votre Peuple Canadien, unique Moyen d'exiter L'émulation.

Sans fatiguer Votre Majesté par le détail des meaux que leur a Occa-sionné La privation de ces avantages, dont elle a été instruite par des représentations précedentes de La part de vos fidels Sujets Canadiens ; ils se contenteront de Lui dire que de La maniere differente de procedder quant à la forme, et quant au fond dans les affaires Civiles, et du prix exhorbitant des Sallaires éxigés par Les gens de Loix, S'est en suivie La Ruine d'un nombre considerable de familles. Votre peuple Canadien, Sire, déja Ecrasé par tant d'autres Calamitées, n'avoit pas besoin de ce surcroit d'Infortune.

La Religion, Sire, que nous professons, et dans la profession de Laquelle Il vous a plû nous assurer que nous ne Serions jamais troublées, quoique differente de celle de vos autres Sujets, Seroit-elle un motif (du moins dans Votre Province de Quebec) pour Exclure une si considérable peuplade

[1] See Proclamation of Oct. 7th, 1763, p. 120.

[2] Canadian Archives, Q 7, p. 363. The date of this petition is not given, but it was apparently drawn up at the time of Governor Carleton's return to Britain in 1770.

d'Enfants Soumis & fidels à La participation aux bontés du meilleur des Roys, du plus tendre des peres. Non Sire, Le préjugé ne perça jamais Jusqu'à Votre Thrône; vous aimés égallement & Sans distinction tous vos fidels sujets, vos Canadiens auront toujours pour Votre auguste personne Le plus parfait amour, La plus grande Soûmission; c'est à ces titres, Sire, qu'ils attendent de Votre Majesté La même bienveillance, La meme protection que vous accordés a tous vos Sujets.

Déja Instruits, Sire, par Le Général Guy Carleton, Gouverneur de Votre Province de vos favorables dispositions à notre Egard, c'est a ce digne representant de Votre Majestée qui connoit parfaitement L'Etat de cette Colonie, & Les Moeurs des peuples, que nous confions nos tres-humbles Supplications pour Les porter au pied de votre Thrône: Le Rapport, Sire, que vous fera Le Genereux Sage et désinterressé Gouverneur et de nos meaux qu'il a adouci autant qu'il Lui a été possible & de notre Conduite Soûmise & affectionné Envers Le Gouvernement, achevera, nous osons l'esperer Ce que votre Coeur Royal & paternel a déja commencé.

Rendus à nos coutumes et a nos usàges, administrées suivant la forme que nous connoissons, chaque particulier sçaura La force de ses titres & Le moyen de se deffendre, sans être obligé à dépenser plus que La valleur de Son fond, pour Se maintenir dans sa possession.

Devenu Capables de Servir en toute Condition Notre Roy, & notre patrie, nous ne Gemirons plus de cet état d'humiliation qui nous rend pour ainsi dire La vie insupportable, & Semble avoir fait de nous, une Nation réprouvée.

Comblés, Sire, de vos Graces, et de vos faveurs, pénétrés d'amour et de reconnoissance, nous apprendrons à nos Enfants Les bienfaits dont nous sommes redevables à Votre Majestée; & ils se joindront a nous pour implorer les Bénédictions du Ciel sur votre personne Sacrée, sur votre auguste famille, & pour la prosperité & l'aggrandisement de vos domaines.

Lanaudierre	Beaubien	amiot
Riganville	Boisseau	Lech^s De Léry
Perrault	Courval	F. J. Cugnet
Perras	Pinié	Nanry Rousseau
Panet	Joseph Duval	Tanguine
Marcoux	Berthelot	f. Laju
P. Oueille	Marchand	Borneau
Lannier	Guichau	Richard Corbin
Guegrand	Louis Turgeon	Branard
Dénéchaud	Jean baptiste dufour	
Soupiran	Ch^s Voyer	Brimont
Manvide fils	Deschenaux	A. f. Meignot
Saillant	A. Dalciat	Louis Rousseau
M. Linerin	P. foulard	Siard fils
Langlois	Numon	Delezenne
J^b duchesnay fils	Dufan	N. Voyez
Louis Lizot	F. Billet	M^l Bouchand fils
Allexis Jean	Guillemard	L. fremont
Pavant	Le Ct^e DuPre	J. Anieux
Th. Pelerin	A. Raby	Charles Pelerin.

Endorsed:—C. 23

(Translation.)

To the King

Most Gracious Sovereign

May it please your Majesty

Your most humble and most obedient subjects, The Canadians of your Province of Quebec dare to address themselves to Your Majesty with the

deepest respect and with that firm confidence which is inspired in them by your paternal goodness for all your faithful Subjects in general, and by the Favours with which up to the present time Your Majesty has laden his new Canadian Subjects, who will ever preserve the memory of them and the deepest gratitude for them.

From the Moment, Sire, of the union of this Province to the Dominion of your Crown, your most humble servants have taken the Liberty of frequently representing to you, of what importance to their interests it was to be judged and governed according to the Laws Customs and regulations under which they were born, which serve as the Basis and Foundation of their possessions, and are the rule of their families, and how painful and at the same time how humiliating it has been to them to be excluded from the offices which they might fill in this Province, for the Service of Your Majesty, and the Comfort of Your Canadian People,—the only way to excite emulation.

Without wearying Your Majesty with details of the ills which the deprivation of their advantages have occasioned them, concerning which Your Majesty has been informed by previous representations, on the part of your faithful Canadian subjects, they will be content with simply telling you that from the different mode of procedure both as regards form and essence in civil affairs, and from the exorbitant rate of the fees exacted by the Lawyers there has ensued the Ruin of a considerable number of families. Your Canadian people, Sire, who are already overwhelmed by so many other calamities, had no need of this increase of misfortune.

Could the religion we profess, Sire, and in the profession of which it has pleased you to assure us that we shall never be disturbed, though differing from that of your other subjects, be a reason, (at least in Your Province of Quebec) for excluding so considerable a number of Your submissive and faithful Children from participation in the favours of the best of Kings, of the tenderest of fathers? No Sire, prejudice has never reached Your Throne you love equally and without distinction all your faithful subjects. Your Canadians will always have for your august person the most perfect love, the greatest submission. It is from these claims Sire, that they expect from Your Majesty the same benevolence the same protection which you grant to all your subjects.

Having been already informed, Sire by general Guy Carleton the governor of your Province of Your favourable intentions with regard to us, it is to this worthy representative of Your Majesty, who perfectly comprehends the Condition of this Colony and the customs of the people, that we confide our most humble supplications to be conveyed to the foot of Your Throne. The Report Sire, that the generous, wise and disinterested Governor will make to you, both of our hardships, which he has softened as much as lay in his power, and of our submission and affectionate conduct towards the government will we dare to hope, finish what your Royal and paternal heart has already begun.

Restored to our customs and usages administered according to the forms with which we are familiar every indivdual will know the extent of his rights & the way to defend himself without being obliged to spend more than the value of his property to maintain himself in his possessions.

Thus rendered able to serve our King and our country in every situation we shall no longer groan under this state of humiliation, which, so to speak, makes life unbearable to us, and seems to have made of us a reprobate nation.

Overwhelmed, Sire, with your gifts and your favours, penetrated with love and gratitude, we will make known to our children the benefits for which we are indebted to your Majesty, and they will join with us in

imploring the benedictions of Heaven on your sacred person, on your august family and for the prosperity & increase of your dominions.

ADDITIONAL INSTRUCTIONS TO CARLETON 1771.[1]

George R.

[L.S.] Additional Instruction to Our Trusty and Wellbeloved Guy Carleton Esquire, Our Captain General & Governor in Chief in and over Our Province of Quebec, in America, Given at Our Court at S[t] James's the 2[d] Day of July 1771. In the Eleventh Year of Our Reign.

Whereas it hath been represented unto Us, that the Terms and Conditions, under which you are by our Royal Instructions to you, authorized and directed to make Grants of Lands within our Province of Quebec under your Government, have been found to be inconvenient and inadequate; and that it would be more for our advantage, & for the benefit of Our Subjects inhabiting in, and resorting to our said Province, if the ancient Mode of granting Lands which prevailed under the French Government before the Conquest and Cession of the said Province, was to be adopted; We therefore taking the same into Our Royal Consideration, and being desirous to promote as far as in Us lies, the Welfare and Prosperity of Our said Province, have thought fit to revoke & do hereby revoke and annul all such parts of our said Instructions to you; & every Clause, Matter and Thing therein, which contain any Powers or Directions in respect to the granting of Lands within Our said Province; And it is Our Will and Pleasure & you are hereby authorized and empowered to grant, with the Advice of the Council of Our said Province, the Lands which remain subject to Our disposal, in Fief or Seigneurie, as hath been practised heretofore antecedent to the Conquest thereof; omitting however in such Grants, so to be made by you, the reservation of the exercise of such judicial Powers, as hath been long disused within Our said Province. And it is Our further Will and Pleasure that all Grants in Fief and Seigneurie, so to be passed by you, as aforesaid, be made subject to Our Royal Ratification, and also be registered within Our said Province, in like manner as was Practised in regard to Grants held in Fief and Seigneurie under the French Government.[2]

G. R.

HILLSBOROUGH TO CRAMAHÉ.[3]

WHITEHALL 3[rd] July 1771

Lieut. Gov[r] CRAMAHÉ

SIR, The King having been graciously pleased to appoint you Lieutenant Governor of the Province of Quebec, your Commission has been delivered to General Carleton, and I beg you will accept my Congratulations upon this Mark of His Majesty's Attention to, and Approbation of your Merit & Services.

The Affairs of Quebec have, since my last Letter to you, been under the Consideration of the Privy Council, and Orders have been given for such preparatory Steps to be taken, as will I trust lead to the final Settlement of those Arrangements which are so much wished for by His Majesty's faithful Subjects there; in the mean time His Majesty relies upon your prudence and discretion for such a representation of His gracious Intentions towards them, as shall have the effect to fix them in those Sentiments of Duty and Loyalty which they have so zealously expressed on all Occasions.

I am &c

HILLSBOROUGH.

[1] Canadian Archives, M. 230 pp. 114, 115. Carleton was at this time in London, (see note 3 below) and it was apparently in response to his representations in favour of restoring the feudal power of the Crown in Canada that these and other alterations in the colonial system were adopted. See Carleton to Shelburne, p. 201, and Draught of Ordinance, p. 204.

[2] The extent to which these instructions reversed the existing system of land grants and land tenures, may be gathered from a reference to that portion of the previous Instructions to Governor Carleton dealing with land grants. See sections 40-58, pp. 218-223.

[3] In a letter of Carleton to Hillsborough, March 15th, 1769, he requests that he be permitted to return to Britain for a few months, in order to place his views directly before the Government. "By being upon the spot with the King's Servants, I might clear up to them many Points, and remove many

REPORT OF SOLICITOR GENERAL ALEX. WEDDERBURN.[1]

I have taken the same[2] into consideration, and in the course of my reflections upon the subject, I have found myself led into a discussion of the form of government, and of the religion of the Province, which must necessarily have great influence upon the plan of civil and criminal law proper to be adopted there. I have, therefore, presumed to form some ideas upon both those heads as necessarily connected with the more immediate object of reference, and humbly to submit the result of my observations upon so important and so difficult a subject, under the following heads:—

First— —The Government of the Province.

Secondly—The Religion of the Inhabitants.

Thirdly—The Civil and Criminal Laws.

Fourthly—The Judicatures necessary to carry those laws into execution.

Canada is a conquered country. The capitulations secured the temporary enjoyment of certain rights, and the treaty of peace contained no reservation in favor of the inhabitants, except a very vague one as to the exercise of religion. Can it therefore be said that, by right of conquest, the conqueror may impose such laws as he pleases? This proposition has been maintained by some lawyers who have not distinguished between force and right. It is certainly in the power of a conqueror to dispose of those he has subdued, at discretion, and when the captivity of the vanquished was the consequence of victory the proposition might be true; but in more civilized times, when the object of war is dominion, when subjects and not slaves are the fruits of victory, no other right can be founded on conquest but that of regulating the political and civil government of the country, leaving to the individuals the enjoyment of their property, and of all privileges not inconsistent with the security of the conquest.

The political government of Canada, before the conquest, was very simple; for, whatever appearance of regularity of controul and limitation the Arrêts and Commission

Difficulties, which, at this Distance, can neither be so thoroughly discussed, or perfectly understood, as is necessary for the King's Service, whose Interests, in Regard to the Province, I really believe, I could more effectually promote and advance by a Residence of a few Months in London, than of so many years in this Country, and which I am the sooner induced, to propose, that the Government thereof, in my absence, would remain in the Hands of Mr. Cramahé, the eldest Councillor, from whose Sense, Moderation, and Disinterestedness, as well as knowledge of all public Business, concerning it, I am persuaded, the Interests of the Crown could not suffer." Q 6, p. 38. On Dec. 1st, Hillsborough reported that leave of absence had been granted. Carleton left Canada early in August 1770, and on the 9th a Proclamation was issued by Cramahé declaring that the command had temporarily devolved upon him. Carleton's stay in London being prolonged by the development of events in America and the relation of Canada to the situation there, Cramahé was raised to the rank of Lieutenant Governor, in July 1771.

[1] By orders of the Court, of June 14th, 1771, and July 31st, 1772, Solicitor General Wedderburn and Attorney General Thurlow were directed "to take into consideration several reports and papers relative to the laws and courts of judicature of Quebec, and to the present defective mode of government in that Province, and to prepare a plan of civil and criminal law for the said Province, and to make their several reports thereon." The required reports were made, but hitherto it has been impossible to discover the originals among the documents in the Public Record Office, or elsewhere, though copies were apparently brought to Canada. As already observed, (see note 1, p. 263) the greatest secrecy was maintained with reference to all the reports and other important papers relating to Canada, after 1769. Copies of some of these were preserved and printed by their authors, as in the case of the Reports of Maseres and Marriott; others have been found among the papers of the Earl of Dartmouth, Colonial Secretary at the time of the passing of the Quebec Act, and a few of lesser importance have been found among the Haldimand Papers. Though the most essential of these Reports were called for, as means of information when the Quebec bill was before the House of Commons, they were entirely refused by the Ministry. A specific motion for Carleton's Report was brought to a vote and negatived by 85 to 46; another motion for Wedderburn's, Thurlow's and Marriott's Reports was negatived by 85 to 45. (See Cavendish's Debates on the Quebec Bill, pp. 94–95). The only form in which the Reports of Wedderburn and Thurlow have as yet been found, is in the shape of extracts published in "A History of the Late Province of Lower Canada, Parliamentary and Political, By Robert Christie." Wedderburn's Report was dated Dec. 6th, 1772. The extracts here given are copied from Christie's History, Vol. I, p. 27. Alexander Wedderburn was appointed Solicitor General in 1771, and Attorney General in 1778. In 1780 he was made Chief Justice of the Court of Common Pleas and raised to the peerage as Baron Loughborough. He held the office of Lord Chancellor from 1793 to 1801, and on retiring was created Earl of Rosslyn.

[2] The matters referred to him

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present, all power, in fact, resided in the Governor and the Intendant. The Superior Council was generally at their devotion. They had the command of all the troops, of all the revenues, and of all the trade of the country. They had also the power of granting land; and in conjunction with the bishop, they had so superior an interest at the Court of France, that no complaint against their conduct was dangerous to their authority. This was the state of Canada till the treaty of peace. Upon the reduction of the province, a military government took place, and the change was not very sensible to the inhabitants.

After the treaty of peace, a government succeeded which was neither military or civil, and it is not surprising that the Canadians should have often expressed a desire to return to a pure military government, which they had found to be less oppressive. Such a government, however, is not formed for duration, and in a settlement which is to become British, could not be endured beyond the limits of a garrison.

The first consideration, in forming the political constitution of a country is, in what manner the power of making laws shall be exercised. If it were possible to provide every necessary regulation for a distant province, by orders from England, it might, perhaps, be the most eligible measure to reserve that authority entirely to the British legislature. But there must be many local interests of police, of commerce, and of political economy, which require the interposition of a legislative power, acquainted with the affairs, and immediately interested in the prosperity of a colony. In all the British colonies, that legislative power has been entrusted to an Assembly, in analogy to the constitution of the mother country. The most obvious method would then be, to pursue the same idea in Canada; but the situation of that country is peculiar. The Assembly must either be composed of british subjects, or of british and Canadians.

In the first case, the native Canadian would feel the inequality of his situation, and think (perhaps truly) that he should be exposed to the oppression of his fellow-subjects.

To admit the Canadian to a place in that Assembly (a right, which, from the nature of a conquest he has no absolute title to expect,) would be a dangerous experiment with new subjects, who should be taught to obey as well as to love this country, and, if possible, to cherish their dependence upon it. Besides, it would be an inexhaustible source of dissension and opposition between them, and the British subjects. It would be no less difficult to define the persons who should have a right to elect the Assembly.— — To exclude the Canadian subject would be impossible, for an Assembly chosen only by the British inhabitants, could no more be called a representative body of that colony, than a council of state is. To admit every Canadian proprietor of land would be disgusting and injurious to all the men of condition in the Province, who are accustomed to feel a very considerable difference between the seignior and the censier, though both are alike proprietors of land. Nor would it be beneficial to men of inferior rank; for every mode of raising them to the level of their superiors, except by the efforts of their own industry, is pernicious. It seems, therefore, totally inexpedient at present to form an Assembly in Canada. The power to make laws could not with safety be entrusted to the Governor alone; it must, therefore, be vested in a Council consisting of a certain number of persons, not totally dependent upon the Governor.

The Chief Justice, the Attorney General, the Judge of the Vice Admiralty, the Collector of the revenue, and the Receiver General, (if these officers were obliged, as they ought, to reside there,) should hold a seat by virtue of their office; the other members to be nominated by your Majesty, and to be removed only by your royal orders.

As power lodged in few hands is sometimes liable to be abused, and always subject to suspicion, some controul to this authority is necessary. The *first* is, the establishment of a general system of laws for the colony. The *second* is, that in matters of taxation, in those which affect life, and in those which import an alteration of the established laws, no ordinance of the Council should have effect till it is confirmed in Great Britain. The *third* is, that it should not be in their power at all times to act as a legislative body; but that, their session should be confined to the period of six weeks previous to the opening of the navigation to Britain, and at no other time should they be assembled in that capacity, except upon some urgent occasion.

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Under these restraints, it seems reasonable that the power of making laws should be entrusted, for a limited number of years, to this Council, who will be enabled, from their knowledge of local circumstances, to form the necessary detail for executing the plan of laws to be transmitted to them, the regulations for the police of the country, for the administration of justice, for the collection of the revenue, and the improvement of trade and agriculture ; and being bound down by certain rules upon the great objects of legislation, and subject to the constant inspection of government, they will be sufficiently restrained from abusing the power committed to them.

As the immediate power of taxation is not intrusted to this Council, it is necessary that a revenue should be provided under the authority of an Act of Parliament, for which no better plan can be formed than that which has already been proposed to the Commissioners of your Majesty's Treasury, for raising a fund to defray the expenses of government in the Province of Quebec, by a tax upon spirituous liquors.[1]

The religion of Canada is a very important part of its political constitution. The 4th article of the treaty of Paris, grants the liberty of the Catholic religion to the inhabitants of Canada, and provides that His Britannic Majesty should give orders that the catholic subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of England will permit. This qualification renders the article of so little effect, from the severity with which (though seldom exerted) the laws of England are armed against the exercise of the Romish religion, that the Canadian must depend more upon the benignity and the wisdom of Your Majesty's government for the protection of his religious rights than upon the provisions of the treaty, and it may be considered as an open question, what degree of indulgence true policy will permit to the catholic subject.

The safety of the state can be the only just motive for imposing any restraint upon men on account of their religious tenets. The principle is just, but it has seldom been justly applied ; for experience demonstrates that the public safety has been often endangered by those restraints, and there is no instance of any state that has been overturned by toleration. True policy dictates then that the inhabitants of Canada should be permitted freely to profess the worship of their religion ; and it follows of course, that the ministers of that worship should be protected and a maintenance secured for them.

Beyond this the people of Canada have no claim in regard to their religion, either upon the justice or the humanity of the crown ; and every part of the temporal establishment of the church in Canada, inconsistent with the sovereignty of the king, or the political government established in the province may justly be abolished.

The exercise of any ecclesiastical jurisdiction under powers derived from the see of Rome, is not only contrary to the positive laws of England, but is contrary to the principles of government, for it is an invasion of the sovereignty of the king, whose supremacy must extend over all his dominions, nor can his Majesty by any act divest himself of it.

The establishment of the Jesuits and of the other religious orders, as corporations holding property and jurisdiction, is also repugnant to the political constitution, which Canada must receive as a part of the British dominions.

The point then, to which all regulations on the head of religion ought to be directed is, to secure the people the exercise of their worship, and to the crown a due controul over the clergy.

The first requires that there should be a declaration that all the subjects in Canada may freely profess their religion without being disturbed in the exercise of the same, or subject to any penalties on account thereof, and also that there should be a proper establishment of parochial clergymen to perform the offices of religion.

The present situation of the clergy in Canada, is very fortunate for establishing the power of the crown over the church. It is stated in the reports from your Majesty's officers in Canada,[2] that very few have a fixed right in their benefices, but that they are

[1] See Carleton's Report to the Treasury, with proposed duties, &c., Dec. 10th, 1767. Q 5-1, pp. 300 & 306.

[2] Referring to the Reports of Carleton Hey. and Maseres. See note 1, p. 258.

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generally kept in a state of dependence which they dislike, upon the person who takes upon him to act as bishop, who, to preserve his own authority, only appoints temporary Vicars to officiate in the several benefices.

It would be proper, therefore, to give the parochial clergy a legal right to their benefices. All presentations either belonging to lay pastors or to the crown, and the right in both ought to be immediately exercised with due regard to the inclinations of the parishioners in the appointment of a priest. The governor's license should in every case be the title to the benefice, and the judgment of the temporal courts the only mode of taking it away. This regulation would, in the present moment, attach the parochial clergy to the interests of government, exclude those of foreign priests, who are now preferred to the Canadians, and retain the clergy in a proper dependence on the crown. It is necessary, in order to keep up a succession of priests, that there should be some person appointed whose religious character enables him to confer orders, and also to give dispensations for marriages; but this function should not extend to the exercise of a jurisdiction over the people or the clergy; and it might be no difficult matter to make up to him for the loss of his authority, by emoluments held at the pleasure of the government.

The maintenance of the clergy of Canada was provided for by the payment of one *thirteenth* part of the fruits of the earth in the name of tythe, and this payment was enforced by the Spiritual Court. It is just that the same provision should continue, and that a remedy for the recovery of it should be given in the temporal courts; but the case may happen that the land-owner is a protestant, and it may be doubted whether it would be fit to oblige him to pay tythes to a catholic priest.

It has been proposed that all tythes should be collected by the Receiver General of the Province, and appropriated as a fund to be distributed by government for the stipends of the clergy, out of which a certain proportion may be reserved for the support of protestant preachers. This measure, I humbly conceive to be liable to two objections,—*First*—tythe even to the clergy is paid with reluctance, and the government, by undertaking the collection of it, would lose more in the affections of its subjects than it would gain by the additional dependence of the clergy,—*Secondly*—by thus being brought into one fund, the catholic subject will be made to contribute to the support of the protestant clergy, which he may think a grievance.

There is less objection, however, to require the protestant inhabitant to pay his tythe to the receiver general, allowing him, at the same time, to compound for less than the full sum; though I should not deem it expedient to reduce the rate by any positive law.

The increase of that fund will be a proof of the increase of the protestant inhabitants, and it will afford the means of providing for the protestant clergy, whose functions will then become necessary. In the mean time, it may be sufficient to appoint that a protestant clergyman shall be nominated to any parish in which a majority of the inhabitants require it.

In regard to the monastic orders, it will be fit to secularise them entirely, but so great a change ought not to be made at once. It is proper to see how many of them may take benefices, from which they are not excluded by the foregoing provisions.

The Jesuits, however, and the religious houses in France, which have estates in Canada, are upon a different footing from the others. The establishment of the first is not only incompatible with the constitution of an English province, but with every other possible form of civil society. By the rule of their order the jesuits are aliens in every government. Other monastic orders may be tolerated, because, though they are not useful subjects, still they are subjects, and make a part of the community ill employed. The jesuits form no part of the community. They, according to their institution neither allow allegiance nor obedience to the prince, but to a foreign power. They are not owners of their estates, but trustees for purposes dependent upon the pleasure of a foreigner, the general of their order. Three great catholic states have, upon grounds of policy, expelled them. It would be singular, if the first protestant state in Europe should protect an establishment that ere now must have ceased in Canada, had the French government continued.

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Uncertain of their tenure in Canada, the jesuits have hitherto remained *very quiet*, but should the establishment be tolerated there, they would soon take the ascendant of all the other priests; the education of the canadians would be entirely in their hands, and averse as they may be at present to France, it exceeds any measure of credulity to suppose that they would ever become truly and systematically friends to Britain.

It is therefore equally just and expedient in this instance, to assert the sovereignty of the king, and to declare that the lands of the jesuits are vested in his Majesty, allowing, at the same time, to the jesuits now residing in Canada, liberal pensions out of the incomes of their estates.

The information to be collected from the papers transmitted with the reference, is not particular enough to be the ground of an immediate law as to the property claimed by religious societies in France. The principle is clear, that every trust for their use, is void and devolves to the crown. But in applying that principle, the circumstances of each case must be considered, and, in general, it seems expedient to confirm all the titles of persons occupying lands under their grants; to make the terms of payment to the crown easier than to the former proprietors, and to apply the produce for the purposes of educating the youth of Canada, which deserves particular attention. But this subject is more fit for gradual regulations, pursuant to the instructions that may be given to your Majesty's governor, than to form an article in a general plan of laws to be immediately carried into execution.

The convents in Canada do not fall under the same rule as the monasteries. They are not much connected with the political constitution. They may, for a time, be necessary for the convenience and honor of families—perhaps it may be expedient always to retain some such communities there, for the honorable retreat of unmarried women. Certainly it would be inexpedient and cruel to dissolve them by any immediate law. No such change is essential to the political constitution, and whenever it becomes so, the remedy is easy, and the subjects will then receive it as a favor from the crown.

The political and religious constitution of the province of Quebec being established, the next matter of inquiry is, what plan of civil and criminal law is best adapted to the circumstances of the province? and this is not altogether an open question; for, Canada is not in the condition of a new settled country, where the invention of a legislator may exercise itself in forming systems. It has been long inhabited by men attached to their own customs, which are become a part of their nature. It has, of late, acquired some inhabitants superior in power, but much inferior in number, to its ancient inhabitants, equally attached to different usages. The prejudices of neither of these classes of men can be entirely disregarded; in policy, however, more attention is due to the native Canadian than the British emigrant, not only because that class is the most numerous; but because it is not the interest of Britain that many of her natives should settle there. The Canadian also has a claim in justice to the enjoyment of as much of his ancient laws regarding private rights, as is not inconsistent with the principles of the new government; for, as his property is secured to him, the laws which define, create, and modify it, must also be retained, otherwise his property is reduced to the mere possession of what he can personally enjoy.

* * * * * * * * It should also be provided that any Canadian subject of the age of twenty five, who is unmarried and without children, holding land immediately of the crown, may convert his tenure into a soccage holding, by which he shall have the power of devising the whole, and that the purchaser of land held of the king, may convert the tenure into soccage at his pleasure, and it shall then be held and enjoyed as by the law of England.

* * * * * * * * The criminal law of England, superior as it is to all others, is not, however, without imperfections; nor is it, in the whole extent of its provisions, adapted to the situation of Canada. It would be improper to transfer to that country all the statutes creating new offences on temporary or local circumstances.

* * * * It is recommended by the governor, the chief justice, and the attorney general, in their report, to extend the provisions of the Habeas Corpus act to Canada. The inhabitants will, of course, be intitled to the benefit of the writ of Habeas Corpus at common law, but it may be proper to be better assured of their fidelity and attachment, before the provisions of the statute are extended to that country.

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The form of civil government for the province, as it now consists in the distribution of judicial authority, is the most difficult and the most important part of the plan, for, without an easy and exact execution, laws are of very little use to society.

The several opinions reported to your Majesty, by the governor, the chief justice and the attorney general, concur in the causes of the complaints upon this head, and differ little in the remedies proposed.

It is their opinion that the expense and delay of proceeding are at present very grievous, and they seem to think that the division of the province into three districts, and the establishment of courts of justice in each, as in the time of the French government, would afford some remedy to this evil.

To diminish the expense of law suits, too great already for the poverty of the country, by adding to the number of persons who are to be maintained by the law, is at least a doubtful proposition.

It is necessary, therefore, to consider whether other causes besides the want of proper judicatures, may have concurred to produce the grievance of which the Canadians complain, and whether other expedients, besides an increase of places and expense, may not, in part, remove it. The uncertainty of the law of the province must have been one principal cause of the expense of suits. That evil will, in time, be removed.

The change of property, together with the alteration of the course of commerce consequential upon the conquest, producing new contracts in new forms, created a great deal of business for which there would be no established fees, and the ignorant execution of that business opened a new source of litigation. The same thing has happened in the other settlements, where, for a certain time, the gains of those who took upon themselves to act as lawyers, and of course the expense to the other inhabitants, of law proceedings, has been very great. But this evil is also temporary. Without disputing the reality of the grievance, one may suppose that it is a little exaggerated, for all the French lawyers who remained in Canada, were interested to magnify it. They partook of the profits arising from its continuance, and their profits were increased by exciting the complaints.

I cannot conceive that this grievance would be removed by adopting the French judicature, for if one can trust the accounts given by themselves, the expense and the delay of law suits, are in France a most intolerable evil.

* * * * * * * The Canadians, it is said, complain, and not without reason, of the arrest and imprisonment in civil cases. There could be no objection to confine that severe proceeding to the cases in which they are accustomed to it. These are stated to be actions upon bills of exchange, debts of a commercial nature, and other liquidated demands, by which probably is to be understood actions upon bond and other instruments, where the sum demanded is certain. In other cases, the arrest upon mesne process, which is only used to compel appearance or answer, may be abolished, and in lieu of it the plaintiff might be allowed, after due summons, to enter an appearance for the defendant, and if more was required than a mere appearance, the constitution of the court is very well calculated to adopt the process of sequestration, which has already prevailed under the French government.

The execution against the person of the debtor, after judgment, may also be laid aside, and, indeed, in an increasing colony it is very impolitic, and a very cruel proceeding. An effectual and speedy process against the goods and estate would, in most cases, answer the ends of justice much better.

* * * * * * * As the affairs of the colony require a very particular attention, and some regard must there be had to political considerations, it might be proper to attribute the cognizance of all questions concerning the rights of the clergy, the profits of benefices, and the presentation to them, to the council, with an appeal to England ; and all the most material questions of police might, perhaps, be also subjected to their jurisdiction.

N° 1

ABSTRACT of such of the Regulations proposed in M^{r} Solicitor Genl^{s} Report as it may be expedient to establish by Act of Parliament—Inclosed in M^{r} Sol. Genl^{s} Report of 6th Dec^{r} 1772.[1]

That it shall and may be lawful for the Govenor or Commander in Chief of the Province of Quebec, by and with the advice & Consent of such Persons as shall be appointed from time to time by His Majesty &c. to be a Council for assisting the said Governor in the Administration of the Province, not exceeding Twenty, nor less than Twelve, to make and ordain Ordinances for the public Peace, Welfare and good Government of the said Province in all Cases whatsoever.

Provided always, that no such Ordinance shall be made when less than a Majority of the said Councillors shall be present, nor at any Meeting of the Council, except those which shall be specially called for that purpose between the —— day of —— and the —— day of —— unless upon some extraordinary and urgent Occasion, in which Case every Member of the Council resident at Quebec or within —— Miles of the same shall be personally summoned by the Governor to attent the same.

Provided also that no Ordinance by which the Life or Limb of the Subject may be affected, or by which any Duties or Taxes shall be imposed, or by which the Laws of England hereby declared and enacted to be of Force and Validity in the said Province, or the Customs used in Canada, by this Act directed to be observed, may be altered or varied shall be of any Force or Effect until approved by His Majesty and such approbation signified by His Majesty in Council.

That Copies of all Ordinances, so to be framed and ordained, shall, within —— months from the passing thereof (or sooner if Opportunity offers) be transmitted duly authenticated under the Seal of the Province by the Governor or Commander in Chief to the Commissioners for Trade and Plantations, and that the said Ordinances be laid by the said Commissioners for Trade and Plantations, before both Houses of Parliament as soon as may be after the same shall have been received by them from the said Province.

That it shall and may be lawful for all His Majesty's Subjects of the Province of Quebec freely to profess their Religion in the said Province, without being subject to any Penalties or Prosecutions for the Exercise of the same, provided that they attempt nothing by Deed or Writing to the Prejudice of His Majesty's Supremacy in all matters Causes and Things ecclesiastical and civil.

That it shall and may be lawful to and for any Person or Persons who shall be licensed by the Governor of the Province to ordain Priests or Deacons, and also to grant Licenses for Marriages as has been formerly used, but not to exercise any other ecclesiastical Jurisdiction or Authority.

That all Crimes and Misdemeanors, commited in the Province of Quebec shall be tried and determined according to the Laws of England.

Provided always that no Person shall suffer the Pains of Death upon Conviction for any Theft, or felonious taking without Force, where the Value of the thing taken shall be less than five Pounds, nor for any Felony where the Benefit of the Clergy hath been taken away from the Offender by any Statute enacted since the 23^{d} year of the Reign of King Charles the Second.

Provided also that in lieu of the Judgement to be given upon any Conviction for Felony, where the Offender is entitled to the benefit of Clergy, the Offender shall only be fined or imprisoned, or bound to his good Behaviour.

Provided also that no Judgement upon any criminal Charge shall, after the Verdict given, be arrested upon any Objection of Informality in the Indictment or of any Discontinuance in the Record.

[1] Canadian Archives, Dartmouth Papers, M 383, p. 240. These two papers give the chief features o Solicitor General Wedderburn's Report, in the shape of clauses of a bill, and may be compared with the Report of the Lords Commissioners for Trade and Plantations relative to the State of the Province of Quebec, p. 263, as also with the Quebec Act and the various draughts of bills for the settlement of the Government of Quebec which precede it.

SESSIONAL PAPER No. 18

That the Laws & Usages touching the Tenure, Descent & Alienation of Land or real Property, and the Distribution of the Goods of such of His Majesty's Canadian Subjects as shall die intestate, which were in force on the 13th of Septr 1759, shall be observed and maintained in all Questions that shall arise concerning the same in any of the Court of Justice in the Province of Quebec, except in such cases as are hereafter declared.

Provided always that nothing in this Clause contained shall be construed to extend to any Lands that have been granted by His Majesty, or shall hereafter be granted by His Majesty, His Heirs & Successors, to be holden in free & common Soccage: Provided also that it shall and may be lawful to and for any of His Majesty's Subjects at his age of 25 years to change the Tenure of an Estate held of His Majesty &c into free & common Soccage by any Deed executed in the Presence of two Witnesses and presented to the Chief Justice of the Province who shall summon a Jury to assess the Sum to be paid to His Majesty in lieu of the Profits of the Seigniory, and upon payment thereof shall direct the Deed to be enrolled, and the same being enrolled the Land shall from thenceforth be held as Lands in free & common Soccage are by the Laws of England.

That all Wills & Testaments executed according to the Forms used in the Province of Quebec before the 15th of Septr 1759, shall be deemed equally valid & effectual as a Will executed by the Testator in the Presence of three Witnesses, pursuant to the Statute of Frauds and Perjuries.

That in all Marriages heretofore contracted by and between any of His Majesty's Subjects of the Province of Quebec; the Rights of the Husband and Wife and of the Issue, in respect of their personal Property shall be adjudged according to the Laws and Usages which obtained there before the 15th of Septr 1759; But that in all Marriages celebrated after the —— day of —— where there are no Articles of Settlement the Parties shall be deemed in respect to their personal Property to have contracted under the Law of England.

N°. 2

ABSTRACT of such of the Regulations as the provincial Legislature of Quebec may carry into Execution.

Inclosed in Mr Sol. Genls Report of the 6th Decr 1772.

That in all Benefices which now are or hereafter shall become vacant the Patronage whereof belongs to any of His Majesty's Subjects of Canada, the Patron shall nominate the Ecclesiastic to His Majesty's Governor, who shall issue a Licence to the Person so nominated, and where there is no Lay Patron, or where no Person shall be nominated within Six Months, the Governor shall nominate and licence some Person, being a Priest born in Canada or the British Dominions, or resident in Canada for the space of five years.

That every Priest so licensed as aforesaid shall hold his Benefice with all the usual Emoluments and Dues thereto belonging during his natural Life, unless he shall be licensed to another Benefice, or upon Complaint made by any Proprietor of Land in the Parish to His Majesty's Governor & Council; and that in such Suits for the Recovery of his Dues the Production of the Licence shall be sufficient to prove him the Incumbent. Provided always that no Inhabitant or Occupier of any Estate professing the Protestant Religion and having taken the Oaths of Supremacy and subscribed the Declaration against Popery, shall be obliged to Pay Tithes or other Dues to any Popish Incumbent of any Living; But that every such Inhabitant or Occupier of Land shall be obliged to register his Name in a Book to be kept for that purpose by the Clerk of the Council, and that it shall and may be lawful for the Receiver General of the Province to ask, sue for, & recover, by Action or Bill, the Tithes of the Protestant Inhabitants or Occupiers of Land to be applied for the Maintenance of Protestant Divines, in such manner & Proportions, as His Majesty's Governor, with the Advice of the Council, shall appoint.

That all Seigniories, Lands and Estates, which, on the fifteenth day of September, One thousand seven hundred and fifty-nine, belonged to certain Persons assuming to themselves & commonly called the Society of Jesus, shall be vested in His Majesty His

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Heirs and Successors freed & discharged from all Gifts, Grants, Leases and other alienations made thereof, or of any part thereof, since the said fifteenth day of September, one thousand, seven hundred and fifty nine, but charged & chargeable with the Payment of the Sum of Forty Pounds to every Person of the said Society resident in the Province of Quebec upon the said fifteenth day of September, one thousand seven hundred and fifty nine, or who has since been resident there for the Space of five Years, for and during his natural Life. In Lieu of the Homage done by the Tenant to the Lord of whom the Land is holden, every Tenant, when and as often as the said Homage should have been done, shall deliver to the Lord at the Manor-Place a Declaration in writing, expressing the Tenure of the Land, and the Title of the Tenant, whether by Purchase or Descent, to which Act the Lord shall, within two Days, declare his Assent in writing upon the same Instrument, and the same shall then be entered in a Register to be appointed for that purpose at the Chief Town of the District.

That no Sale of Land *bona fide* made shall, after the Purchase Money paid for the same, be rescinded by the Lord of whom the Fee is holden, or by the nearest Relation of the Lineage of the Vender claiming a Right of Pre-emption therein by virtue of any former Custom.

That the Governor or Commander in Chief shall issue a Commission or Commissions under the Seal of the Province to any three Persons, being Subjects of His Majesty, to hear & determine in a summary manner all Causes not exceeding the Sum of Thirty Pounds, taking to their assistance a Person chosen by themselves of the Profession of the Law, licensed by the Governor, and also one other Person nominated by the Attorney General, which Person shall act as their Clerk, but neither of the said Persons shall have any Vote.

Provided always, that where the Sentence shall amount to more than the Sum of Twelve Pounds, the whole Proceeding and the Evidence which shall have been given, shall at the desire of either Party, be transmitted to the Chief Justice of the Province within the Space of fourteen days from the Judgement, who shall within fourteen days return the same to the Clerk of the said Commission with his Affirmance, Reversal, or Variation thereof, and the same shall be executed as if the Sentence had been originally pronounced by the Commissioners. That these Commissioners shall be Conservators of the Peace, and have Power to punish all Misdemeanors upon a summary Complaint by Fine and Imprisonment, not exceeding twenty four Livres and three Months. That it shall be lawful for any one of them to commit for a Breach of the Peace for forty eight Hours; but the Person so committed shall not be longer detained, unless it shall seem proper to two of the Commissioners to detain him for a longer Space; and in that Case the Cause of the Commitment with the Information shall be immediately transmitted to the Chief Justice.

That the Superior Court of the Province shall be held at Quebec on the first day
and shall meet and adjourn itself from time to time, and shall consist of the Chief Justice and two other Judges, who shall have full Power and Authority to determine all Matters & Things in which any real or personal Right, or the quiet Enjoyment thereof is demanded; by any Action real personal possessory or mixt, and also by any Bill in Equity according to the Laws of England, the Customs of Canada, and the general Principles of Justice and Equity; And that their Judgements shall be final in all Cases, where the Value of the Thing in question does not exceed three hundred Pounds; and, in all cases of superior Value, the Party aggrieved by the Sentence may, upon Payment of the Sum decreed (Security being given to the Satisfaction of the Court by the Party receiving it to refund the same in Case of a Reversal of the Judgement) be at Liberty to appeal to His Majesty in Council, which appeal shall be allowed.

That the Chief Justice of the Province shal hold four Sessions for the Trial of all criminal Offences in every Year: two at Quebec, one at Montreal, and one at Trois Rivieres. But in case of any reasonable Excuse approved by the Governor, it shall be lawful for him to appoint the Attorney General, or any other Person, with the Approbation of the Governor, to hold the Sessions in his Place, who shall be appointed by a Special Commission issued under the Seal of the Province a Copy of which with the

Cause of issuing the same shall, as soon as conveniently may, be transmitted by the Governor to the Commissioners for Trade and Plantations.

That in case of any Offence committed, by which the Peace and good Government of the Province may be effected, it shall be lawful for the Attorney General to apply to the Council for an Order to remove the Offender to be tried at Quebec, or to apply for a Special Commission for the Trial of the Offence in the Place where it has been committed.

REPORT OF ATTORNEY GENERAL, EDWD. THURLOW.[1]

Canada had been holden by the French king, in the form of a province, upwards of two hundred years; and considerably peopled near one hundred and fifty years, by the establishment of a trading company, with great privileges and extensive jurisdictions, seconded by the zeal of the age, to propagate the gospel in foreign parts.—Parishes, convents of men and women, seminaries, and even a bishoprick were established there. The supreme power, however, remained with the king, and was exercised by his governor and lieutenant-general with the assistance of a council. About one hundred years ago, Louis the fourteenth resumed the country, and gave it the constitution which was found at the conquest.

He gave them a body of laws, namely, those of the Prêvoté, and Vicompté de Paris. The sovereign power remained with the king. But because the immense distance made it impossible to provide them with local regulations so speedily as the occasion might demand, he gave them a council, with authority to order the expenditure of public money, trade with the savages, and all the affairs of police, to appoint courts and judges at Quebec, Trois Rivières and Montreal, and to be judges themselves in the last resort.

This council consisted of the governor, representing the king's person; and the bishop and five notable inhabitants, named by the two first. To this establishment in a few years were added two more councillors, all seven named by the king; and an intendant of justice, police and revenue, who held the third place in council, and acted as president, collecting voices, &c., and who had, by a separate commission, very large power, particularly in police, wherein he could, if he thought fit, make laws without the council; and in the ordering of the revenue, in which he was absolute; and judge without appeal, of all causes relative to it, as he was, indeed, in all criminal cases.

* * * * *. Office, rank and authority were annexed to land, and otherwise divided among the gentry, with due degrees of subordination; so that all orders of men habitually and perfectly knew their respective places, and were contented and happy in them. The gentry, in particular, were drawn into a still closer attachment to the governments of their posts, in the provincial and royal troops which were kept up there.

This system, a very respectable and judicious officer, your Majesty's chief justice of Quebec,[2] justly extols, as being admirably calculated to preserve internal tranquility and due reverence and obedience to government, and endeared to the natives by long usage, and perfect conformity to their manners, habits and sentiments.

The natives, at the conquest, were one hundred and twenty thousand, whereof about one hundred and twenty-six were noble. And their laws were, such parts of the laws of Paris, as had been found necessary and applicable to their situation, reformed, supplied, changed and enlarged by the king's ordinances and those of the provincial legislature. These have been very judiciously collected, and are among the papers which your Majesty commanded me to consider.[3]

[1] Attorney General Thurlow's Report was dated Jan. 22nd, 1773. The extracts from it here given are derived from Christie's History of Lower Canada, vol. I, p. 46. (See note 1, p. 29[illegible].) Edward Thurlow was appointed Solicitor General in March, 1770, and Attorney General in June, 1771. In June, 1778, he was appointed Lord Chancellor, a position which he held, except for a short interval in 1783, until 1792. On his resignation he was created Lord Thurlow of Thurlow, in Suffolk.

[2] Evidently referring to the Report of Chief Justice Hey, which was one of the documents submitted for consideration but which cannot now be found. See note 1. p. 258.

[3] See note 2, p. 210.

On the eighth of September, 1760, the country capitulated in terms which gave to your Majesty all that which belonged to the French king; and preserved all their property, real and personal, in the fullest extent, not only to private individuals, but to the corporation of the West India company, and to the missionaries, priests, canons, convents, &c., with liberty to dispose of it by sale if they should want to leave the country. The free exercise of their religion by the laity, and of their function by their clergy, was also reserved.[1]

The whole of these terms were stipulated on the 10th of February 1763, in the definitive treaty of peace.[2] By your Majesty's proclamation[3] of the 7th October, in the third year of your reign, (1763) your Majesty was pleased to declare that four new governments were erected, of which Quebec was one, containing a large portion of that country which had been included in the French government of Canada, some parts of which were settled in such manner as hath been mentioned before, but great districts of which still remained rude and barbarous.

And considering that it would greatly contribute to the speedy settling of the new governments, that your Majesty's loving subjects should be informed of your paternal care of the security of the liberty and properties of those who are or shall become inhabitants thereof, your Majesty thought fit to declare that your Majesty had, in the constitution of these governments, given express power and direction to the governors of the said colonies respectively, that so soon as the state and circumstances of the said colonies would admit thereof, they shall, with the advice and consent of your Majesty's council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America, which are under your Majesty's immediate government. And that your Majesty had given power to the said governors, with the consent of your Majesty's said council and the representatives of the people, so to be summoned as aforesaid, to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare, and good government of your Majesty's said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and that in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in or resorting to your Majesty's said colonies, might confide in your royal protection for the enjoyment of the benefit of the laws of England, for which purpose your Majesty declared that your Majesty had given power under the great seal to the governors of your Majesty's said colonies respectively for the erection of courts of judicature and public justice within the said colonies, for the hearing and determining all causes, as well criminal as civil, according to law and equity, and as near as may be, agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal under the usual limitations and restrictions, to your Majesty in your privy council.[4]

* * * * On the 21st of November 1763, your Majesty appointed Mr. Murray, to be governor of Quebec, commanding him to execute that office according to his commission, and instructions[5] accompanying it, and such other instructions as he should receive under your Majesty's signet and sign manual, or by your Majesty's order in council, and according to laws made with the advice and consent of the council and assembly. * * * * * He is further authorised, with the consent of the council, as soon as the situation and circumstances of the province will admit of it, to call general assemblies of the freeholders and planters, in such manner as in his discretion he should think fit, or according to such other further instructions as he should receive under your Majesty's signet or sign manual, or by your Majesty's order in council. The persons duly elected by the major part of the freeholders of the respective parishes and places, before their sitting, are to take the oaths of allegiance, and supremacy, and the declaration against transubstantiation.

[1] See Articles of Capitulation of Montreal, p. 8.
[2] See Treaty of Paris, 1763, p. 73; especially article 4, p. 74.
[3] See Proclamation of 1763, p. 119.
[4] From Proclamation of 1763, p. 119.
[5] See Governor Murray's Commission, p. 126; and Instructions, p. 132.

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The said governor, council and assembly are to make laws for the public peace, welfare and good government of the said province, and for the benefit of your Majesty, not repugnant, but as near as may be to the laws of Great Britain, such laws to be transmitted in three months to your Majesty, for disallowance or approbation, and if disapproved, to cease thenceforward.

The governor is to have a negative voice, and the power of adjourning, proroguing and dissolving all general assemblies.

* * * * * * * Some criminal laws must be put into immediate and constant execution, to preserve the peace of the country. The English were so. They act most strikingly upon the minds of the people, and must be administered without any equitable qualifications. These are said to be universally received. In truth, they could neither be refused nor avoided.

* * * Three very different opinions have been entertained. There are those who think that the law of England, in all its branches, is actually established, and in force in Quebec. They argue that your Majesty, upon the conquest, had undoubted authority to establish whatever laws should seem fittest in your royal wisdom: that your Majesty's proclamation dated the seventh day of October, 1763, was a repeal of the existing laws, and an establishment of the English laws in their place, in all parts of the new subjected countries: that the several commissions to hear and determine by the laws of England, were an actual and authoritative execution of those laws; and that the law, as it prevails in the province of New York and the other colonies, took its commencement in the same way, and now stands on the same authority.

If your Majesty should be pleased to adopt this opinion, it seems to afford a full answer to the whole reference, by exhibiting not only a general plan, but a perfect system of civil and criminal justice, as perfect as that which prevails in the rest of your Majesty's dominions, or at least it leads off to questions widely different, touching the expediency of a general change in the established laws of a colony, and touching the authority by which it ought to be made.

Others are of opinion that the canadian laws remain unrepealed. They argue that according to the notion of the english law, upon the conquest of a civilized country, the laws remain in force till the conqueror shall have expressly ordained the contrary. They understand the right acquired by conquest, to be merely the right of empire, but not to extend beyond that, to the liberty and property of individuals, from which they draw this consequence, that no change ought to be made in the former laws beyond what shall be fairly thought necessary to establish and secure the sovereignty of the conqueror. This idea they think confirmed by the practice of nations, and the most approved opinions. "*Cum enim omne imperium victis eripitur relinqui illis possunt, circa res privatas, et publicas minores suæ leges, suique mores, et magistratus hujus indulgentiæ pars est, avitæ religionis usum victis, nisi persuasis non eripere.*" Grot. 3. 15. 10.; and if this general title to such moderation could be doubted, they look upon it to be a necessary consequence of the capitulation and treaty alluded to before, by which a large grant was made them of their property and personal liberty, which seem to draw after them the laws by which they were created, defined and protected, and which contain all the idea they have of either. This moderated right of war, flowing from the law of nations and treaties, they think may have some influence upon the interpretation of the public acts above mentioned.

Though the proclamation of 7th October, 1763, is conceived in very large terms, generally enough to comprehend the settled countries together with the unsettled, yet the purview of it seems to apply chiefly if not altogether to the unsettled, where the laws of England obtain a course till otherwise ordered; for it seems to assume and proceed upon it, as manifest that the laws of England are already in force, which could not be true of any settled country reduced by conquest. It also recites for its object that it will greatly contribute to the *speedy settling* our said new government; and at any rate, they think it too harsh a conclusion to be admitted that such an instrument in the state thereof, not addressed to the Canadians, nor solemnly published among them, nor taking any notice of their laws, much less repealing them, should be holden to abrogate all their former customs and institutions, and establish the english laws in every

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extent and to every purpose, as it may be thought to do in unsettled countries, which conclusion, however, they know not how to avoid, but by confining it to those countries where no settled form of justice existed before.

If it be true that the laws of England were not introduced into Canada by this proclamation, they consider the several commissions above mentioned, to hear and determine according to those laws, to be of as little effect as a commission to New York to hear and determine according to the laws of Canada.

* * * * * * Others, again, have thought that the effect of the above mentioned proclamation, and the acts which followed upon it, was to introduce the criminal laws of England, and to confirm the civil law of Canada. In this number were two persons of great authority and esteem ;—Mr. Yorke and Mr. De Grey, then Attorney and Solicitor General, as I collect from their report of the 14th April, 1766.[1] One great source, they represent, of the disorder supposed to prevail in Canada, was the claim taken at the construction put upon your Majesty's proclamation of 1763, as if it were your Majesty's intention, by your Majesty's judges and officers of that country at once to abolish all the usages and customs of Canada, with the rough hand of a conqueror, rather than in the true spirit of a lawful sovereign, and not so much to extend the protection and benefit of your Majesty's english laws to your new subjects, by securing their lives, liberties and properties, with more certainty than in former times, as to impose new, unnecessary and arbitrary rules, especially in the titles to lands, and in the modes of descent, alienation and settlement, which tend to confound and subvert rights instead of supporting them.

There is not, they observe, a maxim of the common law more certain, than that a conquered people retain their ancient customs till the conqueror shall declare new laws. To change at once, the laws and manners of a settled country, must be attended with hardships and violence. And, therefore, wise conquerors having provided for the security of their dominions proceed gently, and indulge their conquered subjects in all local customs which are in their nature indifferent, and which have been received as rules of property or have obtained the force of laws. It is the more material that this policy should be pursued in Canada, because it is a great and ancient colony, long settled and much cultivated by french subjects who now inhabit it, to the number of eighty or one hundred thousand.

* * * * * * In criminal cases, whether they be capital offences or misdemeanors, it is highly fitting so far as may be, that the laws of England should be adopted, in the description and quality of the offence itself ; in the manner of proceeding to charge the party, to bail or detain him, to arraign, try, convict, or condemn him. The certainty and lenity of the English administration of justice, and the benefits of this constitution, will be more peculiarly and essentially felt by his Majesty's canadian subjects, in matters of crown law which touch the life, liberty and property of the subjects, than in the conformity of your Majesty's courts to the english rules in matters of tenure, or the succession and alienation of real and personal estate. This certainty and this leniency are the benefits intended by your Majesty's royal proclamation, so far as concerns judicature. These are irrevocably granted and ought to be secured to your Majesty's canadian subjects according to your royal word.

I have rather presumed to trouble your Majesty with a copy of their expressions than any abstract of their opinion ; because, though I subscribe absolutely to the truth and good sense of their positions, I freely confess myself at a loss to comprehend the distinction whereby they find the criminal law of England introduced, and the civil laws of Canada continued, by instruments which seem to establish all the laws of England, both civil and criminal at the same time, in the same sentence, and by the same form of words, if they are understood to establish any, or to relate to Quebec.

They seem to proceed much upon the supposed superiority which they justly impute to the criminal laws of England. It is very unfit that I should speak of them to your Majesty without the utmost reverence. But I can conceive that a Canadian, blinded, perhaps, by the prejudices of different habits, may think of them in a different manner, and even set but small value on that excellent institution the trial by jury ; whereby

[1] See Report of Yorke and de Grey, p. 174.

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the natural equality among men is so admirably preserved, and the lowest subjects of the state admitted to more than an equal share of the supreme judicial authority. I have been actually informed that a canadian gentleman would think himself degraded, and more hardly used by being submitted for life or limb to the judgment of his tradesmen, than if he were put to the question and tortured by the king's authority.

If the difficulties were liquidated and the way more open, I humbly submit to your Majesty, that some other points should be previously settled, before the forms of mere civil and criminal justice can be legally conceived. What form of civil government is fittest to be adopted in that country is doubtless a question of policy and state; notwithstanding which, it seems no less manifest, that any given form of civil government will take effect and influence in a thousand ways, upon any scheme to be designated, of civil and criminal justice.

Religion also, so far as it affects the state and becomes an object of establishment or toleration, seems to be a matter of policy and state; and yet it is sufficiently obvious what a multitude of laws must follow upon any given establishment or toleration, more or less according to the degrees in which the religion is incorporated with the state.

What public revenue is to be established in a new province is, perhaps, a question merely political; but when decided, it generally draws after it a system of laws peculiar to itself and an appropriated tribunal. The same observation holds, in a certain degree, of the police of a country.

Being totally uninformed of your Majesty's royal pleasure touching these important articles, I feel it extremely difficult to state any certain scheme of civil and criminal laws, or any which must not receive deep and material alterations for that which your Majesty shall be pleased to determine on those heads.

There are, at the same time, certain principles which seem, in my humble opinion, to claim your Majesty's gracious attention, as the basis of any new laws to be made in Quebec.

The Canadians seem to have been strictly entitled by the *jus gentium* to their property, as they possessed it upon the capitulation and treaty of peace, together with all its qualities and incidents, by tenure or otherwise, and also to their personal liberty; for both which they were to expect your Majesty's gracious protection.

It seems a necessary consequence that all those laws by which that property was created, defined, and secured must be continued to them. To introduce any other, as Mr. Yorke, and Mr. De Grey emphatically expressed it, tend to confound and subvert rights instead of supporting them.

When certain forms of civil justice have long been established, people have had frequent occasions to feel themselves and observe in others the actual coercion of the law in matters of debt and other engagements and dealings, and also in the recompense for all sorts of wrongs. The force of these examples goes still further and stamps an impression on the current opinion of men and puts an actual check on their dealings; and those who never heard of the examples or the laws which produced them, yet acquire a kind of traditional knowledge of the legal effects and consequences of their transactions, sufficient and withal absolutely necessary for the common affairs of private life. It is easy to imagine what infinite disturbance it would create to introduce new and unknown measures of justice; doubt and uncertainty in the transaction; disappointment and loss in consequence.

The same kind of observation applies with still greater force against a change of the criminal law, in proportion as the examples are more striking, and the consequences more important. The general consternation which must follow upon the circumstance of being suddenly subjected to a new system of criminal law, cannot soon be appeased by the looseness or mildness of the code.

From these observations, I draw it as a consequence that new subjects, acquired by conquest, have a right to expect from the benignity and justice of their conqueror the continuance of all these old laws, and they seem to have no less reason to expect it from his wisdom. It must, I think, be the interest of the conqueror to leave his new subjects in the utmost degree of private tranquillity and personal security; and, in the

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fullest persuasion of their reality, without introducing needless occasion of complaint and displeasure, and disrespect for their own sovereign. He seems, also, to provide better for the public peace and order, by leaving them in the habit of obedience to their accustomed laws than by undertaking the harsher task of compelling a new obedience to laws unheard of before. And if the old system happens to be more perfect than any thing which invention can hope to substitute on the sudden, the scale sinks quite down in its favor.

It should be remembered that the scheme of government and laws for Canada, was conceived by a wise court in a cool moment, untainted with private passion or public prejudice. The principles of humanity and the views of state combined to suggest that plan which might serve to build a flourishing colony upon. The plan was improved, from time to time, by the wisdom and experience of succeeding times, and not left to become obsolete and unfit for the progressive state of the province.

Although the foregoing observations should be thought just, as a general idea, yet circumstances may be supposed, under which it would admit some exceptions and qualifications. The conqueror succeeded to the *sovereignty* in a title at least as full and strong, as the conquered can set up to their private rights and ancient usages. Hence would follow every change in the form of government which the conqueror should think *essentially necessary* to establish his sovereign authority and assure the obedience of his subjects. This might possibly produce some alteration in the laws, especially those which relate to crimes against the state, religion, revenue and other articles of police, and in the form of magistracy. But it would also follow, that such a change should not be made without some such actual and cogent necessity, which real wisdom could not overlook or neglect;—not that ideal necessity which ingenious speculation may always create by possible supposition, remote inference and forced argument—not the necessity of assimilating a conquered country in the article of laws and government to the metropolitan state, or to the older provinces which other accidents attached to the empire, for the sake of creating a harmony and uniformity in the several parts of the empire; unattainable, and, as I think, useless if it could be attained:—not the necessity of stripping from a lawyer's argument all resort to the learned decisions of the Parliament of Paris, for fear of keeping up the historical idea of the origin of their laws:—not the necessity of gratifying the unprincipled and impracticable expectations of those few among your Majesty's subjects who may accidentally resort thither, and expect to find all the different laws of all the different places from which they come, nor according to my simple judgment, any species of necessity, which I have heard urged for abolishing the laws and government of Canada.

The foregoing thoughts are humbly submitted to your Majesty, as general and abstract propositions, liable to be much altered in the application, by what your Majesty may think fit to resolve upon the matters of policy and state which have appeared to me in some degree previous considerations to any plan for the administration of civil and criminal justice, and upon which I have not presumed to offer any opinion. All which is humbly submitted to your Majesty's royal wisdom.

PLAN OF A CODE OF LAWS FOR THE PROVINCE OF QUEBEC; REPORTED BY THE ADVOCATE-GENERAL, JAMES MARRIOTT, LONDON, MDCCLXXIV.[1]

To the King's Most Excellent Majesty.

May it please your Majesty,

Whereas your Majesty was pleased, by your order in council of the 14th of June, 1771, to direct *that several reports and papers relative to the laws and courts of judicature of Quebec, and the present defective mode of government in that province, should be referred to your Majesty's advocate, attorney, and solicitor-general to consider the same; to*

[1] The Report of Advocate General James Marriott, though not found among the State Papers, was published in 1774, under the title here given. The latter part of the report, pp. 129–246, is chiefly con-

take to our assistance other persons, as we shall think fit, for the purpose of giving informations, and to prepare a general plan of civil and criminal law for the said province:[1] and by a farther order, dated 31st July, 1772, reciting the former order, your Majesty was pleased to direct, *that the advocate, attorney, and solicitor-general should make a separate report thereupon to your Majesty in council, with all convenient speed.* In most humble and dutiful obedience to your Majesty's commands, I have the honour to report, that I have perused and considered attentively the papers referred, and have obtained several very useful informations.

It is with the utmost diffidence I now venture to lay before your Majesty in council the result of the reflections which have arisen in my mind upon this subject: perplexed as it is, and so very extensive, both in its matter and in its consequences, to your Majesty, and your government, it would be full of danger to lay down any opinions (not only of what the law is, at large, but what the law ought to be; which is the great question referred) too positively, in relation to a country so remote from home, and to a people, their laws, and customs, with which your Majesty's subjects here are so little acquainted; I cannot, therefore, offer these thoughts otherwise than merely problematically, and as in deliberation, with submission to superior wisdom; and I shall readily accede to any better reasonings which may be set forth in any other report of the law servants of your Majesty, and in which we might unite.

It is observable, that the several reports hitherto made and referred to us, do not agree in opinion; but so far as they do not oppose each other in matter of fact, so far we may venture to try to frame some sort of opinion on the ground of those facts which are laid before us.

Notwithstanding that there ever has been, among men of reflection, a great variety of sentiments upon the subject of general legislation, and that such subjects require the life of a Plato or a Montesquieu to discuss, and the experience of ages to confirm them, it seems to be nearly certain, upon the ordinary experience of mankind (an observation very necessary and applicable to the progressive state of Canada) that wants make manners, and that manners make laws, interpret and controul them in every age and in every government: on the other hand, that laws, in a certain degree, can change the manners of a people, is not to be doubted; because their manners alter with the increase and circulation of property, on which the laws have a visible influence: that in a state of society, where the numbers are few, the wants simple, and the property free from the intricacies of commerce, the laws of that society also are few and simple. The government of a people in such a state represents the government of a private family. It is therefore impossible to form a general code of civil and criminal law for any people, without its being subject to change in the progress of civil society; nor can it be effective without its being adapted to the immediate wants of the people, and not inconsistent with the tone of their manners: but it is clearly the interest of the governing power, for its own preservation, to watch every change of circumstances, to follow expediencies as they arise, and to model its laws according to the position of the subject, and the views of that leading policy which is the wisdom of states, and the spirit of legislation.

Father Charlevoix,* in speaking of the administration of justice in Canada, in 1663, bewails *the time when arbitrations were no longer decisive, dictated by good sense and the laws of nature; that it was a singular reflection, and humbling for mankind, that the precautions which a wise and great prince thought proper to take to banish fraud, and establish justice, by a new code for the colony, were the encrease of the one and the weakening of the other.* The truth is, the colony was changed, and the laws followed.

cerned with religious questions, which are only of incidental significance for the constitutional history of the Province, and is therefore omitted. The foot-notes designated by the signs *, †, ‡, &c., are contained in the report; those added by the editor are designated by numerals as usual. As may be gathered from the report, Marriott, had little sympathy with the policy which eventually dominated the Quebec Act and his examination before the House of Commons during the debate on that bill is an interesting bit of legal fence to avoid revealing his opinions of the measure. See "Cavendish's Debates on the Quebec Bill", pp. 163-169 and 172-176. James (afterwards Sir James) Marriott was Advocate General from 1764 to 1778, when he was appointed Judge of the High Court of Admiralty, a position which he held till 1798.

*Lib. viii. p. 370, 371.

[1] See note 1, p. 296.

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In forming the preliminary propositions, in deliberation, to serve as a basis of a code of laws for the province of Canada, it must be taken for granted, as a first and clear position, that the great and sudden change of the political and relative circumstances of the country of Canada makes a farther change of its laws absolutely necessary. It is not an *ideal necessity* which I mean, not the hope of *attaining any perfection which* may *exist in speculation* only, but it is a necessity in fact. The laws and people of Canada are already changed; nor can a previous question† be supposed of the political expediency. After the representations of the board of trade in the strongest terms, the reports of the governor, chief justice, attorney-general[1] of the province, and correspondence with the secretary of state, annexed in the papers referred; and after your Majesty's order in council hath declared the necessity of a new system, by setting forth, that *the present mode of government in the province is defective, and commanding your Majesty's law servants to prepare a general code of law for the same, and to call upon all persons we may think fit for information*; such an ample reference precludes all brevity and reserve, and lays your Majesty's law servants, in my conception, under an indispensible obligation, however painful, to enter into every possible consideration upon a large scale, and *to bring the whole subject in one prospect before your Majesty*, that your Majesty, in your great wisdom, may weigh upon the most extensive informations the grounds of some probable system. This latitude is the more necessary, because, if hasty and ill digested regulations should be adopted, upon any mistaken notions of men and things, the evils already felt by your Majesty's government will increase beyond the power of a remedy.

The relative positon of the colony in its actual and possible views, being well considered, and all facts being well stated and established, the reasonings will easily follow.

To know what Canada wants, it is very proper to consider the relation in which it once stood to France, and the relation in which it now stands with respect to Great Britain. This colony was settled with views of policy and commerce, by a mission of Jesuits only, upon pretence of religion, and supported in opposition to the early claims of the British crown, as it was natural to a military government, upon military principles. On a view of the civil establishment of this colony in its infancy and progress, which appears from a perusal of the French commissions‡, nothing can be more simple, or formed with greater latitude than the general and indefinite powers granted to the French officers, to whom it was entrusted. The whole government, in its original state seems to have been left to the influence which military force** has over the bodies, and, which a system of religion, dazzling in its ceremonies, and operating forcibly on the imagination, has naturally over the minds of men *, whose employments and wants leave little time for reflection. The common law or custom of Paris, was to be their rule, by the edict of Lewis XIV. To this general system have been added a number of royal edicts, regulations of the superior council, ordinances of intendants, &c. which form the law peculiar to the province***; and although it appears upon the authority of Canadian lawyers, that many parts of the law of the custom of Paris have not at any time been executed in the colony; yet the state of the colony has been the only reason of it; and that no cases have yet arisen as objects of those parts of the law of the custom of Paris which have not been executed.

†Report of the attorney-general.

‡ Vide Creation du conseil souverain de Quebec, 1663.

** Histoire philosophique et politique des etablissemens et du commerce des Européens dans les deux Indes, tom. vi. p. 142.
Tous les colons y devoient sans exception une obeissance aveugle à une autorité purement militaire.

* Ibid. p. 157. La necessité rendit soldats tous les Canadiens.

*** La coûtume de Paris modifiée par des combinaisons locales forma le code de ses loix. Ibid. 146.

[1] See note 1, 258. For Report of Attorney General, see p. 258.

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In the condition described, the colony of Canada at the peace of Versailles[1] ||, was ceded to the crown of Great Britain, absolutely, with no restriction but such as regarded the preservation of private property, or had a view to certain modes of religious worship, or rituals, in case they were permitted by the laws of the country, which now became sovereign. One hundred thousand subjects *in this ample manner* (to use the words of the treaty) transferred from one sort of government to another, totally different in manners, languages, laws, and religion, must necessarily suffer a violent alteration.

It is very observable, that in the XLIId article of the capitulation for Montreal and Canada,[2] the demand was, *that the Canadians shall be governed according to the custom of Paris, and the laws and usages established for that country.* This is neither granted nor refused, but *reserved.* The answer is, "*they become your Majesty's subjects.* The consequence is, their laws are liable to be changed. But until the system of laws of the ancient inhabitants should be repealed by the authority of the new sovereign power, their old system was understood by many to be in full force upon them. This is laid down, as *a most certain maxim of the common law,* by Mr. Yorke and Mr. De Grey, in their report[3]; by which I suppose they meant the law of nations. That doctrine is laid down *as the common law* by Lord Coke, in Calvin's case. But the common law of England has nothing to do with the question; it is a matter of the jus gentium, and it depends upon the silence and presumed indulgence of a new sovereign power, as well as upon any acts whereby the sovereign's pleasure is made publicly known. There is no occasion to cite passages of Grotius §, or Puffendorff, or any other German or Dutch writers, to shew their opinion of what *is possible for the sovereign power to permit by not abrogating.*

But much more difficulty occurred (and it was increased by the steps taken by the British government) upon the question, *whether the laws, civil and criminal, of the ancient inhabitants, became binding upon the persons and properties of British subjects who came over to settle in Canada after the conquest?* who have been thought to carry out with them, as it has been expressed by somebody, all the laws of England upon their backs; and who, in a more particular manner, claimed the benefit of your Majesty's proclamation, so far as it was understood to be binding, as declarative of the general laws of England, and of your Majesty's right in consequence, with the advice of your Majesty's privy-council, to make laws for any conquered country ceded to the crown, exercised by your Majesty in this instance, in the same analogy as in royal grants or charters, heretofore of any unsettled lands and territories belonging to the crown, acquired by occupancy of the subject; the conditions of which grants have been the result of the royal pleasure, having regard to the fundamental laws of England.

The fact appears to be, that a proclamation has been issued by your Majesty, with the advice of your privy-council, so long ago as the 7th of October 1763[4]; setting forth, that *in the interim, until a provincial assembly could be called, all persons inhabiting the said colony may confide in your Majesty's royal protection for the enjoyment of the benefit of the laws of the realm of England; and for that purpose your Majesty had given power to the governors of the said colony, to erect, with the advice of their councils, courts of judicature and public justice.*

As the commission* of the governor of Quebec[5], is almost in every article a direct copy of the commission of the governor of New York in 1754, and of the commissions of the governors of the rest of your Majesty's colonies, modelled doubtless upon those granted upon their first settlement; so it should seem as if this proclamation had been copied inadvertently, and in the hurry of office, from some former proclamation relative

|| Article IV. Sa M. tres chrêtienne cede et transporte le tout au dit roi, et à la couronne de la Grande Bretagne, et cela de la manière et dans la forme la plus ample, sans restriction.

§ Report of the attorney-general.

*Vide printed Collection, p. 93, 102, 239, 250.

[1] See the Treaty of Paris, 1763, p. 73.

[2] See Articles of Capitulation of Montreal, p. 8.

[3] See Report of Yorke and de Grey, p. 174.

[4] See Proclamation of Oct. 7th, 1763, p. 119.

[5] See Commission of Governor Murray, p. 126.

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to Nova Scotia, or some other *unsettled* British colony, inviting persons to emigrate thither from the mother-country ; and that the reflection never entered the thoughts of the drawers up of this proclamation, that Canada was a conquered province, full of inhabitants, and already in the possession of a legal establishment.[1] In consequence of this proclamation and commission, courts of judicature were set up, and the judges were directed to follow the laws and customs of England.[2]

In a report† made April 1766, by the then attorney and solicitor-general, Mr. Yorke and Mr. De Grey,[3] it was laboured, that this proclamation was only meant *to be introductive of select parts of the laws of England, and not of the whole body of laws ; and that the criminal laws of England, and of personal wrongs, were almost the only laws that came under the description of the words* enjoyment of the benefit of the laws of England ; *and that the laws of England relative to descent, alienation, settlement, and incumbrances of lands, and the distribution of personal property in cases of intestacy, and all the beneficial incidents to real estate, in possession or expectancy, were not comprehended under the proclamation.*

The proclamation issued upon the 7th of October 1763. The commission of the governor was subsequent to the proclamation ; the bill not being signed by the attorney-general for the commission by letters patent till 22d of October ; and on the 14th November 1763, the privy-council made an order for interlineations of some necessary words.[4] Indeed I am disposed to think, that the proclamation, singly considered, and of itself, *without other acts of government which followed it*, did not introduce absolutely the law of England, in the whole of its system, by general words ; because it might possibly bear some sort of distinction, as taken above, between cases civil and criminal : and it might also bear the distinction of new, and the old subjects, who were the emigrants from home ; the former, as governable by their own ancient usages ; the latter, as bearing the privileges of Englishmen upon their backs. It might be said, the proclamation was meant for the new settlers, and for the new grantees, and related to *the yet unoccupied lands* of the province, and extended no farther.

But these distinctions were under a farther difficulty from other acts of government : the actual establishment of the courts of justice, of the king's bench, and common-pleas, with commissions and titles similar to those of the judges and courts of Westminster Hall, and with express instructions to follow the English laws and customs, did of necessity, and ipso facto, introduce all the modes of judicial proceeding according to the laws of England ; although with this modification, *so far as they could be put in practice under such circumstances* ; and did also strongly tend to introduce gradually the whole system of English laws, and did occasion a strong presumption in the minds of all men, that it was then actually introduced, or meant to be introduced as soon as possible.

The two ordinances of the 17th of September 1764[5], and of 6th of November 1764,[6] transmitted home to the king in council, *and never disallowed*, are very strong in favour of this idea, although the first contains some saving clauses, viz. *that the judges in the court of common-pleas are to determine agreeably to equity, having regard nevertheless to the laws of England, as far as the circumstances and present situation of things will admit, until such time as proper ordinances for the information of the people can be established by the governor and council, agreeable to the laws of England. That tenures in respect to grants prior to the cession by treaty, and the rights of inheritance as practised before that period, shall remain the same till the* 10*th August* 1765, *unless altered by some declared and positive law, with a salvo of his majesty's rights.* The consequence after the

† Vide Inclosure, p. 166.

[1] That this is a mistaken supposition with reference to the conditions which led up to the Proclamation of 1763, will be evident from a consideration of the "Papers Relating to the Establishment of Civil Government in the Territories ceded to Britain by the Treaty of 1763." See pp. 93–119.

[2] Referring to the Ordinance of Sept. 17th, 1764 ; see p. 149.

[3] See Report of Yorke and de Grey, p. 174.

[4] See pp. 125 & 126.

[5] See p. 149.

[6] See p. 166.

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expiration of this date is obvious, that the rights of inheritance and tenures would be changed to the laws of England, so far as this ordinance and declaration could legally change them.

With respect to the chief justice, as a judge of appeal, the difficulty put upon him by his commission,[1] to decide by the laws of England, was very great; and it could only be avoided by his considering himself as a judge in the second instance, to examine the decisions of the inferior court, by the same rules as they formed their judgments; agreeably to the latitude expressed. It is to be observed, that the chief justice of the king's bench has no authority in his commission to act as a judge of appeal, but he derives it only from the ordinance of the governor, of the 17th September 1764. It is observable, *that the governor is limited to the instructions annexed to his commission, and to such as shall be hereafter given him under your Majesty's signet and sign manual, or by order of council, and conformable to such reasonable laws and statutes as shall be made and agreed upon by him, with the advice and consent of the said council and assembly.*

The form of French government (say the lords commissioners of trade, in their report to the committee of council, July 10th, 1769*),[2] *though not entirely abolished by those royal declarations, was thus in many parts materially altered, and made to correspond with that form of government which has been established in your Majesty's other American dominions. The restrictions in the commission arising from the test act of the 25th Charles IId, prevented the measure of an assembly being executed in a colony where all the principal old inhabitants were of the Romish religion. Many constitutional services were unprovided for in the commission and instructions; and what is worst of all, it has since been found necessary that several ordinances, in matters of local regulations, and internal oeconomy, made by the governor and council, should be disallowed by your Majesty; upon this consideration* (as the board of trade state it), *that they were made without a due authority to enact them.*

The effect which the taking of this ground of a want of due authority, must have upon the opinion of the inhabitants, and their respect for government, and the question of legality, with respect to every other ordinance of the same sort, is but too obvious. A grand jury in Quebec,[3] with more zeal in the object, than judgment in pursuing the means, present the incapacitation of the Romish religion; to prevent jurors of that religion being impanelled in cases of life and death; and to controul the measures taken by the governor, general Murray, in consequence of the legislative powers lodged together in a military person and his council, and which produced the dissatisfactory ordinance of 17th September 1763; great part of which has been repealed by another ordinance,[4] as well as many other local regulations which have been disallowed by your Majesty in council.

The confusion which existed under these circumstances does exist to this moment. But the whole confusion results not only from the new legal arrangements, but it seems to be originally existing as the natural effects of a conquest.—The confusion is complained of more easily than it can be remedied. Every new mode is considered as a hardship by the old inhabitants, and so might they equally complain of the conquest. Their minds naturally revert to their ancient usages, and *their wishes return to their ancient government.* It is no reproach to them; they must feel as men: and to men every political change which brings an uncertainty of rights, and of the mode of pursuing them, is of necessity painful.

It is stated, that in the courts of common-pleas, the proceedings are drawn up in any form or style that the parties think proper; in French or in English, as the attorneys happen to be Canadian or English born subjects; and commonly in the French language, as the practisers are chiefly Canadians; that the old inhabitants distribute effects of persons deceased in case of intestacy, viz. the share of widow and children,

* Vide Inclosure, p. 9.

[1] See Commission of Chief Justice Hey, p. 190.

[2] See Report from the Lords Commissioners for Trade & Plantations relative to the State of the Province of Quebec, p. 263. The portion here quoted will be found on p. 265, last paragraph.

[3] See "Presentments of the Grand Jury of Quebec," p. 153.

[4] See Ordinance of July 1st, 1766, p. 172.

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and divide their lands, according to their former French law; that the new English settlers follow the English rules of the statute law in cases of distribution; that the old inhabitants contract, convey, and mortgage their landed property, according to their old mode of conveyancing, notwithstanding the ordinance of the 17th September 1764, which makes the French laws, regarding lands, expire after a limited period; that the new English settlers use the English mode, and the same estates have sometimes passed through the two different modes of transfer. It is to be conceived in the latter case, that no great harm can arise if they are but conveyed bona fide. But as the English shall intermarry more and more with the Canadians, some difficulties may arise as to the distribution of the effects of intestates, and the manner of dividing immoveable inheritances, and taking by descent in right of primogeniture, because the laws of France and England differ exceedingly in these particulars; and the English blood may claim the protection of the laws of England, against the laws of France. But this difficulty may possibly be obviated by the method hereafter proposed.

It is stated by Mr. attorney-general Mazeres, that in the civil proceedings carried on in the new superior court of king's bench, the forms of all actions, the style of the proceedings, the method of trial, the rules of taking evidence, are such as are prescribed by the English law, and are universally known by the Canadians to be so. In the courts of common-pleas, there is much more of the face and language of the French law, for the pleadings are drawn up in any form and style which the parties or their advocates think proper, sometimes in the French, and sometimes in the English language, as the attornies who prepare them happen to be Canadians or Englishmen; but they are most frequently in the French language, the business of these courts of common-pleas being chiefly managed by the Canadian procurators or attornies. Justices of peace are not very respectable in the eyes of the Canadians; sheriffs and bailiffs are also officers very unlike to the military conservators of the peace, and to the executive powers to which the Canadians have been accustomed. The arrest of body in the first instance in civil suits was held at first by the Canadians to be an unnecessary hardship and restraint, and to be inconsistent with their notions of honour, and disgraceful to the person arrested; the event of the suit in his favour was not thought a sufficient reparation for the insult; but the French notions of honour have, it seems, now given way to convenience, and the inhabitants are said to be very ready at using arrests against each other. On the other hand, so much indulgence to the persons of creditors, as is allowed by the English laws of bankruptcy, is thought by many of the British merchants and others to be ill adapted to promote and preserve credit in the tender state of the commerce of the province; and that it is an encouragement of frauds there, (as no doubt it is in England). On the contrary, the English laws of bankruptcy are well received by many of the ancient Canadians, as being agreeable to the spirit of the French laws in cases of *deconfiture* or insolvency. It is agreed on all hands, in criminal proceedings, *that the Canadians do as well as English universally understand the criminal laws of England to be in full force; that no other are ever mentioned or thought of; and that the Canadians seem to be very well satisfied with them.*[1]

This representation of Mr. attorney-general Mazeres is confirmed by the appendix to the report of the 15th September 1769, made by the governor and chief justice. It is very full on this head: *that in all criminal cases, whether capital offences or misdemeanors, the laws of England have already been adopted, both in the description and quality of the offence, and in the manner of proceeding, to charge, commit, arraign, try, convict, and condemn the offender. And the certainty and lenity of those laws, and the benefits of this part of the English constitution, are generally known to the Canadians, and high in their estimation.*

But whatever the criminal law of England is in the great lines of treason, felony, &c. I conceive it must of course have taken place in the colony of Canada; and that no other system of criminal laws could exist there at any instant of time after the conquest: because this part of distributive and executive justice is so inherent in dominion, or, in other words, so attached to every crown, and is so much an immediate emanation

[1] See Maseres' Report, more particularly pp. 240-242.

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of every government, that the very instant a people fall under the protection and dominion of any other state, the criminal, or what is called the crown law of that state, must ipso facto and immediately operate: it cannot be otherwise; for were it otherwise there would be no effective sovereignty on one side, and no dependence on the other. The dominant power can exercise and execute no laws but those which it knows, and in its own name, and with which its servants are conversant: and the subjects can obey none but such as arise out of the new relation in which they stand. The French Canadian lawyers have in general, as I have heard from good authority, the same ideas upon this subject of the criminal law.

With respect to the civil laws, there may be a distinction; because a conquered people may be understood to be governed by their ancient laws touching their civil property, so long as they remain unchanged by any declaration to the contrary of the new sovereign power; the silence of which may be construed to be a tacit confirmation. And these civil laws may be binding upon such British subjects who adopt them, *by going to* them of their own free will, and by acquiring property under them; as if they went to Jersey, Guernsey, Minorca, Scotland, or elsewhere in your Majesty's dominions. But with respect to the criminal laws, I cannot conceive that any native subjects of your Majesty can be tried for life or limb, in any of your Majesty's dominions, by any other laws than the laws of England, either in matter or manner; or suffer the punishments annexed to such crimes by the laws of France, such as the torture to exact confession upon circumstantial evidence, the breaking upon the wheel, the forms of trial by written evidence, personal interrogatories, monitories for voluntary witnesses to appear against the prisoners, and the like. Till there is an absolute surrender, military law must prevail in every country and supersede the common law; but the moment the new sovereign is in peaceable possession, the merum imperium, or power of the sword, or the haute-justice, as the French civilians call it, to be exercised according to common law, takes place; and this power must extend to all crimes that concern *the peace and dignity of the crown.* These are mala in se, crimes in themselves, and universally known in every nation. Those crimes which arise from prohibitions are not known, and therefore they are not governed by penal statutes antecedent to the conquest. The mixtum imperium, of personal wrongs and civil property, must be promulged before the ancient laws are understood to be altered.

In these views, your Majesty's proclamation, declarative of the enjoyment of the laws of England, seems to have been justifiable, and to be rightly understood in regard to all your Majesty's subjects in Canada, without distinction of the places of their birth, so far as it relates to the criminal crown law in the greater crimes, such as treason and felony; because there the proclamation was meant to convey an actual benefit to the Canadians, by putting an end to both, the military law as well as the French criminal law.

With respect to a general assembly, if it had been called agreeably to the proclamation, which recites the discretionary power given to the governor by his commission to call one (*as soon as the circumstances of the colony will permit, as in the other British colonies*), this measure would have served to have pointed out the spirit and dispositions of the people: but the fact is, an assembly, though summoned and chose for all the parishes but Quebec,[1] by governor Murray, has never sat. And it is now agreed, by governor Carlton, the chief justice, and Mr. attorney-general Mazeres himself, (who had formed a plan of an assembly or legislative council, as a succedaneum instead of an assembly) that the measure of calling an assembly in the present circumstances is by no means necessary; that it would be premature, and attended with many great public inconveniencies; as the people in Canada are in general extremely illiterate, and not yet ripe for so great and sudden a share of liberty and legislative power. Monsieur Lotbiniere * says, that he doubts whether there are more than four or five persons in a parish, in general, who can read. It is apprehended, therefore, that the calling an assembly would not have remedied or regulated all the causes of complaint, or might

* Article iv.

[1] Marriott must have been either mistaken or misinformed on this point, as there is no evidence of an assembly having been elected or called under Murray.

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even have created new ones. But *that it may be the source of factions which have been much experienced in the other colonies*, I think is no good general objection, because all assemblies of men naturally fall into disagreements: it is the necessary result of opposite interests, or ideas. Different perceptions make men appear like different animals one towards another.

I conceive that no laws *in the detail* can be well formed for any country but by a legislative body upon the spot; because such a body best knows its own wants, and how to find the means, and how to apply them. The colonies of Georgia and Nova Scotia were long drooping under a military government. The extraordinary improvements of them, from the moment they have been permitted to make laws for themselves, is a conclusive argument of the necessity of some legislative powers to be given to a body representative of the whole colony, with limitations; but it is by no means intended to speak decisively for or against the measure of calling an assembly: it may be extremely proper to establish some legislative body, with a reasonable degree of independency, after the outlines of legislation shall have been first drawn by your Majesty, either in your privy council, or in your great council in parliament; an assembly of *some sort* may then be useful to carry into execution the details, and to build on the foundations, which shall have been laid out by a superior policy. A legislative and elective council might possibly be the most useful with a *power of negative in the governor*, provided that the laws, which are to be passed in such council, should be only provisional, although they should happen to pass without the governor interposing his negative voice; but not to operate till they have had your Majesty's express confirmation, and even afterwards to be always subject to revocation at your Majesty's pleasure. And I am the more inclined to a legislative council, because it seems to be consistent with reasons of policy, to preserve the great difference which already subsists between the people of this country and the rest of your Majesty's colonies: yet, at the same time, it is necessary to make the Canadians forget that they were Frenchmen, and to approximate them more as British Canadians, to a British government by a systeme mitoyen, or middle system, so as to effect, what the chief justice calls, *the happy temperament of new and old laws*, to reconcile the engagements of the crown with respect to both sorts of subjects, and to answer the views of political government; not in that sort of absolute uniformity of laws, or religion, which exists no where but among the small savage tribes of men, and which is not found even in the most despotic states; because a perfect uniformity cannot exist without extirpation of the subjects, which in the end must weaken or destroy the sovereign power itself.

The great lines of union of Canada to the realm of Great Britain is drawn at present by virtue of the conquest. The assimilation to the government of the latter, in its tribunals, is actually effected; an assimilation of manners will follow slowly; but it must necessarily follow as a natural consequence of the conquest. The military spirit of the inhabitants, carried to an excess in the late war, has begun to cease: it is very important for England that it should cease. The cultivation of lands, and attention to commerce (unknown before) are encreasing every day. The back settlements extend themselves; and the inhabitants of New York and Canada are approaching nearer to each other: some French families who disliked the English proceedings, and many of the first English settlers at Quebec, who were several of them, upon speculation, adventurers from England, Scotland, and Ireland, or factors for considerable merchants in London and elsewhere, have retired from the colony; not finding that the advantages of the opening of trade there answered the sanguine expectations of the earliest comers, who overstocked it, or who found a military government in too great a degree of vigour, for the advantage and security of commerce; and their place is daily supplied by another sort of men, such as English officers of the army and navy, and actual merchants. A great*

* Histoire philosophique, tom. 6. p. 152. Une veine plus sûre encore s'offroit à l'industrie. C'étoit l'exploitation des mines de fer si communes dans ces contrées. La seule qui ait jamais fixé l'attention des Européens est près des Trois-Rivieres. On l'a découverte à la superficie de la terre. Il n'en est nulle part de plus abondantes, & les meilleures de l'Espagne ne sont pas si douces. Un maître de forge, arrivé d'Europe en 1739, augmenta, perfectionna les travaux de cette mine jusqu'alors foibles & mal dirigés. La colonie ne connut plus d'autre fer: on en exporta même quelques essais; mais la France ne voulut pas voir que ce fer étoit le plus propre à la fabrique de ses armes à feu, le seul qu'il lui fut même avantageux d'employer. Une politique si sage s'accordoit merveilleusement avec le dessein qu'on avoit pris, après bien d'incertitude des former un établissement de Marine en Canada.

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iron foundery has been established[1]; warehouses are built; one house for distilling only has cost five thousand pounds; and such great purchases of landed property have been made of the native Canadians by Englishmen, that some of the principal seigniories at this day are in the actual possession of the latter. There are about two or three thousand British born settlers besides the troops. Every year, with the accession of commerce, in the nature of things, must encrease their numbers and consequence, if the laws are well fixed and administered, and a military government, if possible, is avoided or controuled. For notwithstanding the natural indolence and ignorance of the people and their present poverty, notwithstanding the circumstances of the pretended difficulties attending the navigation of the river Saint Laurence, at all times, from its rocks and shoals, magnified by the inexperience* or policy of the French, and the long time it is frozen, for full six months†: yet when we consider the prodigious encrease of population, the exceeding fertility of Montreal, the healthiness of the air, and the vast woods of Canada, capable of supplying naval stores and lumber for the West Indies and for the mother-country. The produce of horned cattle, sheep, horses, hogs, wool, corn, hemp, flax, furs, pot-ash, iron, &c, and the situation of the river St. Laurence, so adapted for the fishery,‡ and encrease of seamen, objects little pursued by the French government, totally taken up with military operations, it is reasonable to think that all these circumstances will, in course of time, conspire to make Quebec the Petersburgh§ of North America.

It appears from very good authority, that the imports from Great Britain in one year, into this colony, have amounted to two hundred and forty thousand pounds sterling, exclusive of the imports from Scotland, Ireland, the West India islands, and the other American colonies; and this too, soon after the conquest; when the complaints and confusion of a military government were at their highest pitch; a magistrate and merchant, who brought ten thousands into the province, mutilated by the soldiery; and who burnt their barracks in defiance of an act of parliament, by which they were erected for the relief of the people; and notwithstanding many other embarrassments arising to trade, from the condition of a people, among whom the laws were administered in a summary way, and by persons without legal ideas.

From all the facts stated as above, upon the evidence of informations, of too high authority to be doubted, follow two consequences; that after certain new regulations have been submitted to with patience by his Majesty's new Canadian subjects, for a space of thirteen years, though with some such complaining as is natural upon a change of masters, the foundation which has been laid for an approximation to the manners and government of the new sovereign country must either continue to be built upon, or otherwise the whole that has been done must be thrown down, and the Canadians *must be restored in integrum* to all their ancient laws and usages; a manner of proceeding as inconsistent with the progressive state of human affairs, as with the policy of any possible civil government, which cannot revert, but must necessarily take up things, and go on the state of existing circumstances at the time it intervenes; for it can as little stand still at any given point, as it can decide that the flood of times shall go no further. As men move forward, the laws must move with them, and every constitution of government upon earth, like the shores of the sea from the agitation of the element, is daily losing or gaining something on one side or the other.

* The tide runs up as far as Trois-Rivieres: and frigates of war have gone up as high as Montreal, to the great astonishment of the French, who considered the river above Quebec as only navigable by oared vessels.

† The time it is quite free is stated by general Carleton to be in May.

‡ Pêcherie du loup marine. p. 144. ibid. La pêche de la baleine pouvoit donner une singuliere activité aux colons, & former un nouvel essaim des navigateurs. Le plan de pêcher de la morue sur les deux rives du fleuve S. Laurent. p. 155. ibid.

§ Ibid. p. 152, 153. L'extraction de bois des chênes d'une hauteur prodigieuse, & des pins rouges de toutes les grandeurs, est facile par le fleuve S. Laurent. & les innombrables rivieres qu'il reçoit. Ce pays avec quelques soins & du travail pouvoit fournir la France entiere des voiles, des cordages, du bray, du gaudron.

[1] Referring to the St. Maurice Forges, near Three Rivers, which had been established in 1733. It will be observed that Marriott makes frequent reference to the recently issued work of Abbé Raynal, "Histoire philosophique et politique des établissments et du commerce des Européens dans les deux Indes." Paris 1770.

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From all which propositions there seem to follow plainly these political consequences; that after your Majesty's proclamation, commissions, and instructions, and the establishments of courts of justice, and several ordinances which have been issued by virtue of that proclamation, it would lessen, not only in the minds of the Canadians, but of all Europe, the ideas of the dignity, wisdom, and authority, of your Majesty's government, to undo every thing that has been done: that to restore the colony to its military principles and spirit, would be in consequence to restore it to France.

The views of the French cabinet are evident, by the accounts transmitted by governor Carlton of the Canadian born officers who served in the last war, who are in a particular manner cantoned in Touraine *, and supported by the French government, with an increase of pay and all arrears.[1]

With respect to a military system, nothing can more effectually suppress a rising spirit of commerce, which alone can make the acquisition of Canada of any utility to Great Britain. Commerce grows only to perfection in an open soil, and in an air that is free; it will scarce bear to be regulated: it is like the sensitive plant; if touched, it shrinks; but if pressed, it perishes. I chuse rather to speak in this figurative manner, than to enter into the detail of the consequences and instances of military powers, exercised in this colony at a certain period. It never can be the interest of any government, however despotic, to oppress commerce; it would be like the wild Indian, who cuts down the tree, to gather the fruit.

Hitherto the province † of Canada has been an establishment only expensive and burthensome to the French government. The fur trade was but a small object of attention, in proportion to the political views. The great use of the colony was offensively: as a place of arms, to form the head of a chain of forts, and to harass the British colonies, and, by its position and communication with the lakes quite down to the Mississippi, to command the commerce and force of the whole interior of the vast American continent. A circumstance which varies the political considerations and consequences with respect to the arrangements of Canada very greatly from the case of Minorca, to which it has been improperly compared, as a rule for the government of it: the relative positions are totally different: it might as well be compared to the rock of Gibraltar, or the fort of an African garrison.

If Canada should be recovered by France in a future period, by the mere want of wisdom in a British government, and if France or any other power should obtain but a near equality of force at sea, the consequence must prove the conquest of all our American colonies, or perhaps the establishment of a new independent empire, upon a general revolt of all the colonies, of which Canada, by its position, would form the head. But now under proper regulations this country may be productive of the greatest commercial advantages to Great Britain. The West India islands, and the East Indies are the graves of its best seamen; the northern American navigation and its fisheries are the nurseries of them; and Canada may become the source of an infinite supply to this nation both of men and of naval stores.

It is an object of great consideration to your Majesty's government, that the returns to Great Britain are all made in raw materials to be manufactured here; and that a considerable duty arises on the exports.

The views therefore of the British government in respect to the political uses to which it means to make Canada subservient, must direct the spirit of any code of laws, of which it may be judged necessary to form the outlines upon the grounds of probability. The additions must be left to time, to experiment, and expediencies, as they shall arise, and to that Providence which holds the scale of empires.

*Vide Col. Carlton's letter to the Earl of Shelburn. Dated Nov. 25, 1767. Inclosure, Appendix, No. 1. p. 67, 68.

† Histoire Philosophique, ibid. p. 143. Tous les objets ne produisoient au fix en 1747, qu'un revenue de deux cens soixante mille deux cens livres.

Ibid. p. 149. Les despenses annuelles du gouvernment pour le Canada après l'epoque de 1749, n'eurent plus de bornes.

Les huit premiers mois de l'an 1760 couterent treize millions cinque cens mille livres. Des ces sommes prodigieuses il étoit du à la paix quatre vingt millions.

[1] See Carleton to Shelburne, Nov. 25th, 1767 p. 196.

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But the great question occurs: *By what authority shall the laws, necessary for the government of this colony, be established?* It is stated, that doubts have arisen, especially after certain decisions, concerning the legality of the ordinances issued by the governor, with the advice of his council, and without any assembly, *as exceeding his commission*‡[1]. If the ordinances are not legal, then all that has been done by virtue of them must be a nullity. Some of them have already been disallowed for exceeding the bounds of the commission, which restrains the power of the governor and council in matters touching life and limb, and imposing duties; consequently very few allowable ordinances can be made under those terms at any time; because few ordinances can be enforced without restraints upon the person, or without affecting property by public burthens.

If it could be supposed for a moment, that the crown has not a right at all times to make such ordinances in the person of the governor and council, without an assembly, (as I conceive it has a right, in a conquered country so circumstanced, and at a certain time to make them) yet I should be inclined to think that all the ordinances hitherto made, and not disallowed, are legal; or that such ordinances might have had, at least pro tempore, a validity within the province, until there shall be an alteration made by some act of the whole united legislature of Great Britain, or at least by order of your Majesty in council, disallowing them. Until such act or order, the case may be conceived to be the same (the governor being the representative of your Majesty by virtue of his commission) as if your Majesty, at the head of your army in the field, were granting capitulations, or giving orders how to dispose of the new subjects de bene esse, for the preservation of their persons and properties, for the good of the state, which is now interested in them, and for maintaining the *peace* and permanency of the acquisition: all which I conceive to be powers necessarily inherent in your Majesty's crown.

The mode of making laws for the colony of Quebec, and carrying them into execution, is a subject upon which many persons may differ. The highest wisdom only can determine whether it is necessary to have the sanction of parliament for a code of laws, which your Majesty of right may give to this colony in some other way. But I humbly apprehend, that an act of parliament may possibly serve the most effectually to justify your Majesty's servants, and to fill the minds of the Canadians with greater confidence: it may declare the powers which are inherent in the crown; and by so doing, it may support instead of diminishing them.

There is a point which deserves the consideration of your Majesty's servants most versed in the common law of the realm, whether if your Majesty has by your proclamation, commissions and instructions, and the several acts done in consequence thereof, given to this conquered country any part of the law of England; that law, once so introduced, be it more or less, can be repealed by your Majesty's authority alone and without the concurrence of parliament, upon the civil law maxim, *cujus est condere ejus est abrogare?*

It is also to be observed, that general Murray is said, upon good authority, to have actually executed his commission with respect to convening an assembly; that the members were actually chose, except at Quebec.[2] So that the expectations of the Canadians have been raised, and, in their ideas, the honour of government pledged to them for a legislative body of their own. In case an assembly shall be hereafter called, in consequence of an act of parliament, it will effectually take away from a Canadian assembly all ground for that pretence, set up by some assemblies in other colonies, of being independent of a British parliament.

If assemblies should be adopted, I cannot omit taking notice of an error in the report and propositions of the board of trade of the 10th July, 1769, page 17.[3] They propose to admit a number of the new subjects into the council. They would enlarge it from twelve members to fifteen; five to be Roman catholic subjects, to be exempted

‡ Printed collection, p. 25, 96.

[1] The references here are to Maseres' "Collection of Several Commissions, and other Public Instruments, &c." pp. 25 & 96. The first reference is to Maseres' "Draught of an Intended Report &c." See p. 243. The second is to Governor Murray's Commission. See above p. 128.

[2] See note p. 317.

[3] See Report from the Lords Commissioners for Trade and Plantations relative to the State of the Province of Quebec; July 10th, 1769, p. 267.

from subscribing the declaration against transubstantiation, as now required by the commission and instructions. But it seems to be forgot, that the oaths against the power of the pope, and in support of your Majesty's supremacy, required by the statutes, will exclude the Roman catholics. Also the manner of wording the plan of an assembly, p. 18 and 19, meant, as it is said there, *to correspond with the plan of the council,* makes the twenty-seven members all liable to the oaths of allegiance, supremacy, and abjuration, by proposing *that they shall not be obliged to take any other.* The consequence follows, they are then to take these oaths; and fourteen are afterwards required to subscribe the test. Now can a Roman catholic, agreeably to the statute of 1 George I. chap. 13, take the oaths which are required to be taken, agreeably to the commission, by the governor and members of the council, assembly, &c. viz. *That no foreign prelate or person hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm?* So that this proposition of the board of trade, plainly appears to be inconsistent with its own views in p. 20, that *the assembly should consist of twenty seven, all indiscriminately to take the oaths of allegiance, supremacy, and abjuration; that fourteen will be protestants, viz. who shall take the test act: and the thirteen who take the oaths of allegiance, supremacy, and abjuration, to be probably, as the plan supposes, Roman catholics.* But the oath of supremacy renders the latter, in my opinion, impossible. The pope can hardly dispense with the test of the sacrament; but he cannot in common sense dispense with oaths, and declarations, and subscriptions, against his own supremacy, as claiming to be sovereign pontiff of the whole Christian world, and, in the power of the triple crown, to bind and absolve all persons and things in heaven above, on the earth beneath, and in the state of the dead below.

As it is stated by the board of trade p. 10. *The test is to be subscribed by all persons having places of trust, and so required by your Majesty's commission to the governor.*[1] By the test act the sacrament is to be taken by them within the realm of England. Although Canada is united to the crown of Great Britain, and consequently to the realm, by the terms of cession, yet I understand that the salvo among the Canadians for the oath of supremacy is, *within this realm? Canada is not this realm, in the view of the statute.*

After all, if it should not be thought proper for your Majesty to give fresh instructions, from time to time, to your governor of the province of Quebec, to publish fresh ordinances, with the advice and consent of his council; nor to convene any legislative council, or provincial assembly, for the purpose of revising or repealing the ordinances already made, and of making new laws; but if it should be thought the wisest measure to lay the state of the province before parliament, then I should conceive that it will be necessary to propose several bills.

First, viz. *A bill for the better regulation of the courts of judicature in the province of Quebec.*

Second, *A bill for declaring the common law already in actual use in the said province.*

Third, *A bill for better raising and collecting the public revenue.*

Fourth, *A bill for giving leave to his Majesty's new Roman catholic subjects in the said colony, to profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit; which were in force antecedent to the definitive treaty of peace, concluded at Paris 10th February 1763; and for the better maintenance of the clergy of the church of England already established in the said colony.*

With respect to the first, a bill for the better regulation of the courts of judicature in the province of Quebec, I conceive, that the complaint of delays in proceedings of the courts of justice is now in great measure removed; for by the last regulation of the courts of common-pleas, by the ordinance of February* 1770, [2](which repeals a part of the great ordinance of 17th September 1764) it is directed, that the courts of common-

* This ordinance, which was not in the papers referred, makes the propositions of the solicitor-general on this head in great measure unnecessary.

[1] See p. 265.

[2] See Ordinance of Feb. 1st, 1770, p. 280.

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pleas established with independent jurisdictions at Quebec and Montreal, *shall be open to the suitors throughout the year, excepting three weeks at seed-time, a month at harvest, and a fortnight at Christmas, and Easter, and except during such vacation as shall be from time to time appointed by the judges for making their respective circuits throughout the province, twice in every year ; and the judges are authorised and directed to issue their process, and to execute every other thing touching the administration of justice, without regard to terms or any stated periods of time, as limited and appointed by the ordinance of September 1764 ; which, with respect thereto, is annulled. The judges to appoint one day in a week, at their discretion, to hear all matters where the cause of action shall exceed the sum of twelve pounds, which day should be declared at the rising of the court, or the next day preceding ; and no adjournment shall be made for any longer time than one week, upon any pretence or ground whatsoever. Every Friday to be a fixed court-day for matters not exceeding twelve pounds, in which case one judge to be sufficient, the other judge having reasonable cause of absence.* The rest of the ordinance contains the forms and modes of proceeding, also a clause, *empowering persons, specially commissioned by the governor, to hear causes where the matter in question shall not exceed three pounds ; provided that titles to lands shall not be drawn into question by their proceedings, and that they observe the same forms of proceeding, and that they do not sit upon a Friday, but on some other day in every week.* It would be very material to see what sort of commissions the judges of the common-pleas have, *for they do not appear in any papers referred.* I understand them to have been created by governor Murray, by virtue of his discretionary power, upon his own ideas. If they are thought proper to be continued, certain regulations must be adopted, in regard to limiting their jurisdiction to cases not beyond a certain value.

The expence of the fees of the new courts is easy to be regulated by a table to be settled by the judges ; and if they are now larger than heretofore, it is no more than that the fees of justice keep pace with the price of other matters, as corn and all other things, are more dearly purchased now than they were in the province before the conquest, because there is more commerce, and consequently more specie circulating in it, which is the representative, or rather the new measure of values ; so that more or less specie must be put into the opposite scale against all property in the other, just as it happens, that more or less specie, real, or nominal, or credited, is introduced into intercourse and commutation. The case must be the same in Canada as it is in every other country ; and the uncertainty of the laws, and of the judicial proceedings, has had no small share in increasing the expence of them.

In the report* of the attorney and solicitor-general Yorke, and De Grey,[1] they recommend that matters exceeding forty shillings, as far as ten pounds, should be determined by proceeding (in the nature of civil bill in Ireland) before the chief justice of Quebec, or by proceeding in nature of the summary bench actions at Barbadoes. How far the ease and cheapness of going to law encourage rather than check litigiousness, is pretty obvious ; however, the local value of money will deserve consideration at all times, in respect to the augmentation of established fees. As a check to litigiousness, and for the promoting quick justice, some method might be found, so as to oblige parties in cases of debt under a certain value, and in all cases of custom of merchants, and of mercantile accounts, to name arbitrators, and those arbitrators to name a third if they do not agree ; and that the award should be certified into the superior court, and made a rule of it upon record, and so carried into execution by it, in the same manner as if the matter had had the most solemn hearing : for which I cannot refer to a better precedent, than to the act of 9 and 10 William III. c. 15. except that the reference is there left to the will of the parties, and of course that act is seldom made use of, nor is it very natural that the practisers should recommend it ; and therefore I propose, that parties, in cases of certain value, should be obliged to name arbitrators.

As the English judges may not happen to be expert in the French language and law terms, it may be adviseable to give to laymen, persons of good character and under

* Art. vi. No. 8. of the Appendix to the report of the lords commissioners of trade and plantations relative to the state and conditon of the province.

[1] See p. 174.

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standing among the ancient inhabitants of Canada, commissions to be assessors, but not to have voices.

Whether grand juries, or petty juries, shall be laid aside; or whether in criminal; or civil causes only; or whether verdicts shall be an open majority, or whether all verdicts shall be special in civil cases, (as the latter is proposed in the plan in the printed collection of Mr. attorney-general Mazeres) are questions of which I am not able to form a perfect judgment, as being partly out of the line of my profession; but it merits a particular consideration, how far it may be adviseable and safe for your Majesty's ministers to propose any thing to parliament that greatly deviates from the general fundamental parts of the constitution at home, and which, for a long time, have already taken place in the colony, in consequence of your Majesty's royal word and authority. The justification of your Majesty's judges, the removing them from every suspicion of partiality, and from the danger of personal revenge, is also a matter of the highest consequence towards themselves, their country, your Majesty, and before God. The peril of discretionary powers, is sufficiently pointed out by that great judge lord Hale, in his History of the Pleas of the Crown, page 160, 161, 211, and it merits the greatest attention from those persons who are called upon to propose a legislative system.

After the evidence of the governor, chief justice, and attorney-general of the province, *that juries in criminal causes are agreeable to all the Canadians*, any imaginations formed to the contrary, with respect to the Canadian lords of manors or noblesse, cannot be admitted. The state of the noblesse in the province will be more particularly explained, when I come to speak of the convents, under the head of religion; I will only observe, in the case of trial of a seigneur, that other Canadian seigneurs would probably be some of the jurors, and that *if any of his tradesmen were of the jury*, they would have an interest in preserving the life of the criminal; as mercantile interests have often supported the worst members in a factious state, both in ancient and modern history, to avoid a probability of losing their debts. But the seigneurs or noblesse by virtue of their fiefs, and the officers and nobles by patent, who have served in the French troops, are, the one too inconsequential, and the other too miserable, in point of property, to merit any distinction by trials, or in the nature of the punishment: to compare them to British peers would be to form an argument of ridicule and not of reason.

As it appears that the Canadians have had so great an objection to arrests being dishonourable, and as arrests create so much misery in a whole family, who become a burthen upon the public, as they prevent every exertion of industry, and render the morals of the prisoner much worse, by confining him in company with the most abandoned criminals, it seems to me that in a commercial state it may be proper to take away arrests of body in the first instance, in civil causes under ten pounds; unless there is an oath of two sufficient witnesses, that the defendant is likely to withdraw himself out of the colony. To arrest an industrious man, when personal labour is of such value to the community, is a public loss, as well as a private one to the person who arrests: it is putting fetters upon that industry, the exertion of which only could discharge the debt.

If arrests should be allowed, it seems highly necessary that imprisonments should be regulated. It would be happy if they were so in every part of your Majesty's dominions. The security and reformation of prisoners should be the objects of the legislature in depriving a subject for any time of his liberty: his life, and health, and morals are of public consequence. The police in Holland, where every prisoner has a separate cell or apartment, is deserving of imitation; neither their minds nor bodies become there liable to the worst contagions; and a released prisoner returns back to society a better and more useful subject than when he entered his cell.

The terms of the ordinance of the 1st February, 1770, appear to me insufficient, in not directing that the sale of all estates in land taken in execution shall be made by public auction; nor does it regulate the other conditions of sale, nor the place where the auction shall be: all which being left to the discretion of the provost-marshal, as I conceive it, may be extremely injurious to the proprietor; and furnish persons with means of procuring the estates at a price greatly inferior to their true value. The ordinance only settles the manner of giving notice, the time of sale, and the fees for the publication.

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It may be proper to allow all pleadings to be in French or English in all the courts at the option of the parties indiscriminately. It should be known in such a country, that parties may plead for themselves: it would be proper to confirm expressedly so much of the process verbal, or rules of practice, in the French courts of the colony of the 7th November, 1668, article 6, as relates to this point; because this public confirmation will obviate the complaint among the Canadians, of the expence of suits, and it will please the inhabitants, without hurting the practitioners; for if the parties can find an abler hand, or can pay him, certainly they will pay him to plead for them: if they cannot, it is but justice they should be permitted to tell their own story, and in their own way.

I am professionally convinced of the absurdity and confusion which is ever occasioned when the style and forms of one system of law, or even of one court in the same system, is applied to the practice of another: the measure of proceedings being inconsistent with the nature of the principles, or the business in question, is in many instances so unequal, that to judge of the law of one country by the rules of process of another is, besides doing injustice under an appearance of doing better, a thing as full of absurdity and ridiculousness, as if a taylor were to take a measure of a man's coat by a ship's quadrant. The forms and style of English writs and pleadings ill agree with the language of the French civil law: it deserves to be considered, how far it may be necessary to follow many other parts of the French process, if the French law in civil property is to remain as the common law of the province. I conceive this must be left to the knowledge, discretion, and experience of the judges; who will have the aid of the bar and the Canadian practitioners: and it may be enacted that no judgment* shall be arrested merely for want of form in civil suits. The fact, the demand, and the defence are easily reducible to simple propositions. But in *criminal cases*, as all the law of England on that head actually now is introduced, the forms of indictment, in *my opinion*, must be continued, and ought to be as strict as in England; upon this ground, because the laws of England being dipt in blood, the advantages given to criminals, by the lenity of the process, and the power of pardon in the crown, are the only ballance of the peculiar severity which is manifest in the inequality of crimes and punishments. The English laws in their institution seem to have been made for the terror of a daring people; the execution of them, for a generous and compassionate one. I concur in thinking that there should however be a mitigation of the law of felonies by statute. That no person in the province should be capitally convicted for theft or robbery under five pounds, although *that is equal to ten in England*; and that in all felonies intitled to clergy, no persons shall be burnt in the hand, or their goods confiscated, but the punishment to be a fine or imprisonment, at the discretion of the court.

As the province derives the less advantages from the superior court, although the most important, and most ably supplied, for want of more frequent sittings, it should be regulated: and the court of King's Bench should be held oftner, and in terms as shall be judged most for the convenience of the inhabitants, besides the circuits. For it is stated that the court of King's Bench has sessions only three times a year at Quebec, and twice at Montreal: whereas in the time of the French government there were three royal courts, one in each district of Quebec, Trois-Rivieres, and Montreal, vested with full power civil and criminal: each court had its judge, and a king's attorney-general for crown prosecutions. They held two courts in every week, except six weeks vacation in September and October, and a fortnight at Easter, and these courts would even sit on other days in the week if extraordinary business required it. From these courts there lay an appeal to the supreme council of the province, which sat every week. The expedition and reasonableness of such arrangement for the distribution of justice is infinitely striking. And it appears not to have been without cause that the Canadians have felt and complained of the difference. To make the sittings of the supreme court of King's Bench more regular, it cannot be better than to adopt the ordinance for that purpose, which was recommended by the chief justice himself from the bench to the grand jury of the province, but which did not pass, because some of the English merchants of that jury, desirous to delay causes of actions for debt in the then low state of commercial

* Vide sollicitor-general's Report.

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credit in the province at that time, did not approve so much expedition of judgment; and therefore the English part of the jury never acquainted the Canadian part, all of whom are now sensible of the utility of the ordinance proposed, and regret the loss of it. Mr. attorney-general Mazeres has printed it, Collection, page 71.[1]

In the cases of appeals the legal value of money deserves great consideration. If the plan of three courts, and an appeal to the governor and council, with two of the judges and King's attornies of the other courts, is not adopted, then the appeal, in cases of four hundred pounds value, might be made directly to your Majesty, without any other intermediate appeal.

It may be also proper to erect, as proposed in the report of the governor and chief justice, a court at Dêtroit, because the settlers there, amounting to about seven thousand persons, are populating very fast, and extending themselves, as the people of New York are, towards each other. An objection may be taken to this, that it is not policy to encourage back settlements: but the question seems to be, not whether the population of the interior North America should be encouraged in policy; but the fact is, that there is, and will be population there; and that where population is, the dominant power must regulate the settlers, or they will regulate themselves probably to its prejudice. The interior settlements certainly are a material supply and support, both of men and provision, to the exterior on that coast, and serve equally to take off the produce of the mother-country, and to make returns by the medium of the sea-ports; but there can be no real distinction as to political good between the inhabitants of the maritime line and those of the back settlements, for they are much connected in view of national strength and benefit; as the radii of a circle all meet in the same common center, and all touch the same extreme boundary.

The great distances of Montreal, one hundred and eighty miles from Quebec, also of Trois-Rivieres, and Dêtroit, deserve attention; and it is an argument sufficient for forming three courts of King's Bench, to save to your Majesty's subjects the great expence of employing for every person, not only his attorney on the spot, but his agent at Quebec, besides the fatigue and expence of travelling himself, and bringing up his witnesses from the extreme boundaries of the province, in a very severe climate. I approve, however, that it should be in the discretionary * power of your Majesty's principal attorney-general, to remove any party for safety for a quick and more convenient trial to Quebec; but this should be restrained to cases of treason only.

It is a fact which deserves attention, that for want of a good government since the conquest, the trade of furs has been but one third of what it was under the French, as appears by the exports.

To look into the map, the situation of Dêtroit sufficiently speaks the propriety of some regulation of justice there; and more especially as it is the mart and entrepot of the fur-trade and the Indian commodities, such a regulation is necessary for the trade, and for preserving peace and friendship with the Indian nations resorting thither.

When Gaspey shall be settled, a jurisdiction should also be established there; but I should apprehend, from observing the situation and form of it in the map, that it might be very proper to unite it to the province of Nova Scotia.

I should imagine it would be very useful if the judges were to have a power, in cases were it might be thought necessary, by themselves, to appoint commissioners in distant parts, with power to summon juries, before whom examinations may be taken, with proper solemnities, upon the spot, and a verdict transmitted to the supreme court under seal, whenever a matter of fact, such as concerning boundaries, waste, dilapidations, execution of contracts, damages done, &c. is in dispute.

The taking evidence in private upon affidavits should be disallowed, unless the parties should consent, or the court should direct them to be taken upon a special cause, or proper grounds shewed upon motion by council. The injustice of parties being evidence upon their own cause, and the practice of causes being determined entirely upon affidavits, is too full of evil not to deserve a peculiar attention, especially if the party who makes the first affidavit, has not a liberty of a reply to the affidavit in

* Vide solicitor-general's report.

[1] The reference is to Maseres' Collection of several Commissions, &c. 1772, p. 71.

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answer; in the usual practice, as I conceive it to be, equivocation and perjury must reign in full force.

It is proposed, by Mr. Mazeres, that in cases of debt to a certain amount (which ought to be very considerable), an allegation, or plea of faculties or effects, being delivered by the plaintiff, the defendant should answer upon oath, giving in an exact schedule of his estate and effects.[1] This proposition may be thought peculiarly hard in many cases: but I conceive the state of the country must determine the propriety or impropriety of the proposal, and that such schedule and account ought not to be called for without very special cause, to be determined in the discretion of the judges.

In a country in which there is very little money, but corn and other perishable effects make the greatest part of the property of the inhabitants, it may be right, in cases of suits for some special property, of the perishable nature of which a proof is made, that the whole at the request of any one of the parties should be liable, by an order of the court, to be sold to the best bidder, by persons to be named and commissioned to sell by both parties; and that the amount shall be placed in the hands of the judge and his register, in imitation of the civil law methods in *usum jus habentium*, or for the account of the party who shall finally prevail in his suit; and the amount to be paid by them into the hands of the receiver of his Majesty's revenue, for his Majesty's use; and that bills be issued to the said judge and register by such receiver for the repayment of the said sums, at the interest of three per cent. A measure which I should conceive would be very useful to create a dependence upon, and strengthen the hands of government in many views, as well as it would be equitable and advantageous to the respective parties.

It may be right, that the judges of the several courts in the province, should be allowed a discretionary power in granting of full costs, and taxing bills.

Instead of one provost-marshal for the whole province, it is proposed, that there should be a sheriff for each district, with some title or mark of honour to the person who should bear it.

The two courts of common-pleas, established by general Murray's ordinance of 17th September 1764, at that time with military men for judges, and priests assessors, and now having almost all the affairs of the colony brought before them, evidently tend at all times to lessen the utility and consequence of the supreme court.

Mr. Mazeres recommends[2] that the province be divided according to its three ancient districts of Quebec, Montreal, and Trois-Rivieres; that there should be three royal courts, or courts of King's Bench, in each; that the judges should have been barristers at law, who have been exercent three years at the English bar, at least, and who have a competent knowledge of the French language, and three King's attornies, and no other courts. These courts to be limited to their respective district; co-ordinate indeed, but not concurrent, as not of equal authority every where, nor as liable to be controuled by each other: and this measure Mr. Mazeres recommends on a ground which appears to be very conclusive, that this division is best adapted to the situation of the several parts of the province, and that the Canadians have been used to it, and that it is therefore most agreeable as well as convenient*. If this establishment of three courts were to take place, then it is proposed, in the same plan, that there should be an appeal to the governor and council of the province, confined to a certain value, and from thence to your Majesty in your privy council. The reason laid down is, that the appeal to the governor and council would preserve a uniformity of law throughout the whole province, and would obviate a difference of decision, which might gradually grow out of precedents in the three different districts, if the three royal courts, or of King's Bench, were to be left perfectly independent, and not to unite in a third superior court in the province.

It is also very well proposed, that the three King's judges, and three attornies should be members of the council ex officio, so as to aid the governor and council upon appeals; whereby the best law abilities in the province would be employed in forming

*Printed Collection, p. 38.

[1] See Maseres' Draught of Report, p. 250.

[2] Ibid. p. 247.

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decisions in the last resort, which would be in fact checking any arbitrary proceedings of a governor, and forming the law of the province. That they should attend the governor at certain times of the year, most convenient for hearing appeals, which is thought to be one month at Christmas. To this I must add, in my humble opinion, a necessary limitation, that the judge from whom the appeal lies, and the King's attorney in his court, shall not sit at the hearing of the cause appealed. It might possibly not be improper to add the judge of the vice-admiralty, and the advocate-general, to the number of the members of the council, as before proposed.

That no appeal should lie to the King and council under five hundred pounds, is thought by some persons a hardship, and that it leaves no check upon the governor and council in less sums of great value in so poor a colony.

It is proposed by Mr. Mazeres†,[1] that no new examinations shall be taken upon appeals in any causes, but only any error of the proceedings be corrected, and a new trial of any fact, if good cause is shewn, shall be granted; and a trial, by a double number of jurymen, if the losing party requires it. That the method of proceeding in the first instance in civil actions* in the common law court, should be as follows; the plaint is to be read to the judge in open court; if he determines that there is good cause of action, summons to issue, but not till then. If the plaint is admitted, it is to be filed as a record; if non-appearance of the party, or good cause shown of non-appearance, then the party summoned to pay costs, at the judgment of the court, upon circumstances, for the delay of suit; and fresh summons to appear again shall issue; if neglect to obey the second summons, judgment to go by default. Answer to the plaint to be either in French or English, and to be filed. That the judge may interrogate the parties himself, in order to determine whether farther testimony is necessary. If either of the parties, on the judge determining that farther testimony and trial is necessary, chuse to have a jury, the party praying it shall pay the expence of the jury's attendance; if both pray to have a jury, both shall pay. If the contest is between a native born subject and a Canadian, the jury to be de medietate, if either party shall require it: the jurymen to receive five shillings per man. For at present the Canadians, as it is stated upon good authority, complain of the attendance upon juries, in civil suits, as a heavy burthen and interruption of their occupations: though they like well enough to be tried by juries, they do not like to be the triers‡, without some compensation.

That any governor should have it in his power to suspend, supersede, or otherwise controul, the counsellors or practitioners at the bar, is evidently liable to many objections. In my humble opinion, therefore, it seems necessary to enact, that for the better regulating all the public courts of justice of the province, the chief justice shall have the sole power of admitting and licensing all advocates, counsellors, and pleaders, procurators, attornies, and solicitors, in the several courts of justice in this province; with power to make rules for the proper serving or education of such persons, and to examine them before admission, and to reject them if he shall see cause; also to suspend or deprive them of the exercise of their offices, for any neglect, contempt, delay, or malversation, fraud, or undue proceeding, in his or any other court, when he shall see cause; and the governor of the said province shall not interfere in the same in his public capacity.

It is also a point that merits great attention from government, that the notaries, who are a very useful and very respectable sort of men, should be continued with their usual privileges, and have some advantages granted them, and should be allowed to practise as solicitors and advocates, and even to be assessors.

It would be right that the law officers of the crown should have honourable establishments, so as to raise them high in respect from the inhabitants, and to make them less dependent upon private business. The salaries, as stated in the Inclosure Appendix, No. 15, are very mean and unworthy of men of education, abilities, and honour. Those clients who pay best for time and labour, will certainly be best served. An encrease of

† Printed Collection, p. 38, 39.
* Printed Collection, p. 33.
‡ Printed Inclosure, p. 38.
[1] See Maseres Draught of Report, p. 251.

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salaries will create an expence: but there may be a false œconomy; and there is no doubt of the truth of this proposition, that a small body of men of abilities in the law, sent out and maintained by the crown in a manner adequate to their rank, and made independent of every private connection, will answer the views of government, and preserve the peace of the colonies more effectually than ten regiments. What has been the consequence in the colonies, and elsewhere, of independent men of great abilities in the law, dissatisfied, with reason or without, and who have gratified their own resentment, or the views of a party, at the expence of the whole kingdom, I need not to observe, and shall only refer to that part of the report upon the civil government of the colony made by Mr. Yorke and Mr. De Grey, which is very strong indeed upon this point† ; of the meanness of the law establishment, which has too long remained a dishonour and a prejudice to your Majesty's service.

The second head proposed is a bill for declaring the common law of the province.

The Canadian lawyers are, it seems, not entirely agreed how much of the French system of the custom of Paris§ has actually enured in the province of Canada. The capitulation for Montreal and the province, article thirty-six, which engages to preserve to the inhabitants their property, seems to me to stipulate the *manner* in which that property is to be held; of consequence the tenures are to be preserved, and all the laws relative to that property. For it is not only the thing which we hold, but the manner in which we hold beneficially, that constitutes our property; therefore I conceive that all the lands in Canada, the property of native Canadians, or which have since passed by descent or by will, are, in virtue of the capitulation, still governed by the law of France, as to the tenures or modes of holding; although by the forty-second article of the capitulation granted for Montreal, and the rest of the province of Canada, and by the ninth article of the treaty of Versailles, *the inhabitants become subjects of your Majesty.* How far your Majesty's proclamation, and the commissions and instructions have or have not superseded this idea, arising out of the terms of the capitulation and treaty, and how far the case of the new settlers, emigrants from Great Britain, and acquirers of lands by new titles, as by mortgage, grant or purchase, is capable of a distinction, has been already observed upon.

I think there is a great distinction between the treaty and capitulation; for the treaty, which makes the inhabitants subjects of your Majesty's crown, confirms to them their property in no other mode than in a permission to retire, and to sell their estates, and those restrained to be sold to British subjects.[1] So that if they stay and claim under the treaty only, they stay under condition of becoming, by their own free act, *British subjects*; and as such subject to British laws. But the treaty made with the sovereign power of France, which, without taking notice of the capitulation, transfers its subjects pleno jure, does not supersede the capitulation made with the inhabitants; because I consider capitulations, in the eye of the law of nations, to be not only as national, but personal compacts, and made with the inhabitants themselves, for the consideration of their ceasing their resistance. It is consistent with the honour and interests of this kingdom, that they should be religiously observed, and that the condition of the grantees should be rendered substantially better, rather than worse, so far as any person or persons are capable of taking benefit of the grant.

At the same time I must observe, that I do not conceive that your Majesty is so bound in your legislative capacity, that you cannot in parliament change the laws of succession or heritage, or prevent the keeping up any corporate body ecclesiatical, by preventing a perpetual renewal by new members, or that your Majesty cannot regulate any other general matter of dividing property real or personal, after the death of the possessor, in the same manner as your Majesty, in parliament, may change the laws respecting your other British subjects; so that the law be not made to the prejudice of any particular private person while he lives. Inasmuch, as no man naturally hath property after death, the community to which it reverts has a right to fix the law of partition after death, as it shall judge most for the benefit of all its members. The right

† Vide p. 156, Inclosure of the Board of Trade, Art. 2.
§ Printed Collection.
[1] See Treaty of Paris, 1763, art. 4, p. 75.

to dispose by will, or to make a private law for a family, is a privilege granted by the community; and restrainable, as the law of France restrains it more than that of England, by excepting the legitime and limiting devises of land in certain degrees, except by deed by and among parties living.

It would probably answer every just and reasonable purpose, and would tend perfectly to quiet the minds of your Majesty's Canadian subjects, if a bill were to pass in parliament to the following effect. That in all cases of wills, tenures, ancient rents, quit-rents, services not being military, divisions of lands, and transfers, hypothecations, or charges and pledges, or incumbrances of property, moveable and immoveable, and of hereditary descent, or partition of dower, or distribution in case of intestacy, the legitime, or portion of children and widows, and of all deeds, leases, and contracts, the ancient laws, customs, and usages of Canada shall be valid; unless the said customs and usages shall have been deviated from by any consent of parties by express convention, or in which the modes of the English law, as in cases of transfer between a Canadian and English born subject, shall have been followed; that in all cases where such custom and usages of Canada are relied upon, either by the party complaining, or the respondent, such custom and usage shall be specially pleaded. And in order the better to erase from the minds of the Canadian subjects, their ideas of veneration for the edicts of their late sovereign, and for the arrets of the tribunals of France, and as much as possible to make them sensible of their union with, and dependence upon the British government, it should be enacted, that the French law, known under the denomination of the custom of the viscounty and provostship of Paris, and so much thereof only as hath actually been practised in the province, shall be pleaded under the title of *the common law, and the custom of Canada, as by act of parliament established*, and under no other title whatsoever; and the abstract of the said custom, as hath been drawn up by a committee of Canadian gentlemen of the law,[1] shall be annexed to the bill to be referred to, as the sole rule; observing only the alteration in the articles 99 and 101, as in the advertisement or preamble of the said abstract is set forth; that lands already granted, or to be granted by your Majesty, your heirs, or successors, shall be holden in free and common soccage tenure, and shall pass according to the laws of England: power always reserved to your Majesty to make grants of lands in any other mode of tenure, if to your Majesty it shall seem meet.

The mode of doing fealty and homage for the Canadian seigniories already established is extremely simple, as appears in the principal extracts of the French laws, c. i. tit. *Foi et homage.* If it is proper to change it at all, it will be better to form a record of the title of the tenure in a more solemn manner, by registering the homage.

It may be proper that the laws of the police hitherto established and practised, should be observed and carried into execution by the justices and other peace officers, and that his Majesty's governor may, with the consent and advice of his council, at any time, on the presentment of any two or more house or land-holders, or any one of his Majesty's justices of the peace, or law officers, issue such fresh orders of police as he shall judge necessary, from time to time, for the better maintaining the highways, streets, bridges, paving, public edifices, wharfs, navigations, for preventing fire, and removing of annoyances to health, or to the free passage, in places where passage hath been usual; provided that such orders be subject to an appeal in cases of property, above the value of ten pounds, to the chief justice of the said province.

The Canadian inhabitants readily enough embrace the protection of the laws of England when they find they make for them. There is something very whimsical in the case of M. St. Ange, which I have seen as stated upon great authority, and it shows the motly mixture of French and English laws in the province, and the confusion resulting from the uncertainty of them, and the want of a regular settlement. Mr. Grant purchased the estate of a minor, Mr. St. Ange; the former a British settler, the latter a

[1] The reference is to the abstract of French law entitled "An Abstract of those parts of the Custom of the Viscounty and Provostship of Paris which was Received and Practised in the Province of Quebec in the time of the French Government. Drawn up by a select Committee of Canadian Gentlemen well skilled in the laws of France and of that Province by the desire of the Hon. Guy Carleton Esq' Governor in Chief of the said Province, London 1772." See also note 2 p. 210.

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Canadian. Mr. Grant never having seen the estate, paid a part of the purchase money, which was very considerable: upon a view of the estate he found it inferior in value to his expectations by one half. He was sued for the remainder of the money; he pleaded the civil law of France, and insisted that he was intitled to a restitution *in integrum*, on proving the true value of the estate to be only one half. The Canadian insisted upon the laws of England, and a special performance of contracts, on the ground of the rule of the law *vigilantibus non dormientibus succurrit lex*. This cause will probably find its way to the council at home.

The description given by general Carlton, in his letter to the earl of Shelburne, No. 3. p. 90. 24th December 1767,[1] of the confusion of the courts of justice, and the consequence of their proceeding by different rules is very striking: *the governor and council, as a court of equity, reversing the decrees of the supreme court of King's Bench, which reverses that of the Common Pleas.*

There are a number of edicts, declarations, rules, ordinances and provisions, which have hitherto been the written law of the colony, and in actual use; which appear from the extracts to be so wise and well fitted to the nature of the colony, that although they cannot now operate by the authority of the French King, yet they seem many of them very proper to be adopted in the new system of law to be given to the Canadians; and therefore it may be right that the substance of those extracts which are proper should be declared to be a part of the common law of the province of Quebec; and to be recited accordingly in this act of parliament, and to be pleaded under it, and not under any other title than as *the act of his present Majesty for declaring the common law of the province.*[2]

This article cannot be concluded without taking notice of the act of habeas corpus, the benefit of which, if extended to this province, may in policy be limited, on account of the peculiar circumstances of the province, and the natural views of the court of France in case of a future war. The governor and council may have a power to suspend the effect of the said act, during the time of any hostilities or declared war, rebellion, insurrection in arms, or invasion of the province, or any other of the dominions of Great Britain.

The proposition made by Mr. attorney-general Mazeres, in his printed draught of a bill for parliament for settling the laws of the province,[3] deserves a very particular consideration, whether it may be useful (if it is thought proper to deviate at all from the French laws of Canada respecting civil property) to introduce the mode of distribution, so equitably settled by the famous act of Charles II; the English law of dower; of wills of personal and *real* estate (in which latter case, the French by their own law are under some restraint); inheritance in descent, and of coheirs; with some alterations in the French and English law more consonant to natural equity with respect to parents in the right time ascending inheriting the lands of children, in default of heirs in the descending line, or of brothers and sisters in the collateral, and less consonant to the feudal principle; which restrains that ascent, and which gives, according to the law of England, the preference to the uncle to inherit the lands of his nephew before the father of that nephew.

In the preface to the abstract of the laws of police, drawn up by the Canadian lawyers, great complaint is made of the not observing the arret of the council of state of 28th April, 1745,[4] which forbids the building any house or outhouses with stone or timber, unless the owners have annexed a French acre and a half in breadth, by thirty or forty in depth, on pain of a hundred livres as fine, and demolition; except granaries, hay lofts, and storehouses. It is represented that the present inhabitants avail themselves of the laws of England, and croud together, as it is natural; in consequence of

[1] See Carleton to Shelburne, Dec. 24th, 1767, p. 201.

[2] In Appendix No. III to Marriott's report, a list of these is given, with the introduction, "In addition to the act proposed, under the head of the Law of the Province, it may be right to consider the following ordinances made by the governor and council."

[3] Referring to Maseres' "Draught of an Act of Parliament for settling the Laws of the Province of Quebec." published 1772.

[4] The reference for this ordinance is given in the note on p. 241.

which many of them live very miserably and idle; and the lands which are more remote remain uninhabited and without cultivation. To endeavour to enforce the substance of this arret, by any act of the British legislature, would be deemed a hardship unnatural to the freedom of our government, nor would such an act be carried into force: and therefore, like all other acts unexecuted, which are found to be mere swords in the scabbard, it would only serve to weaken the high idea the people yet have of the sovereign authority.

The present allotments of lands are thought, being parcelled out in contiguous columns of a certain breadth and depth running up from the river St. Laurence, to be the best calculated partitions possible for the maintenance of each separate family and for mutual aid and defence; and therefore the preserving of the indivisibility of these allotments is an object which is thought to merit the attention of legislature: with this view Mr. Mazeres proposes, in a printed draught of an act of parliament,[1] an alteration of the laws of inheritance, to take effect at a distant period, so as to hurt no persons now living, who therefore cannot complain; which alteration might answer the purpose: besides, that by the power of making wills or deeds, every man has it in his power to form another law for himself, and his family, descendants, or devisees, so as to render any fixed law of inheritance of no effect, if it does not fall in with his own ideas; by these means, agreeably to the spirit of human pride, which carries its views beyond the grave, he may unite all the lands he possesses, in one hand, and in a certain line, the first point of which the testator is delighted to form, and to extend himself into an ideal perpetuity by succession. The French law restrains at present the power of devising by will, by its alloting portions called the legitime; the Canadians may defeat the new law of inheritance as proposed, at their own pleasure, if it were to take place by their wills or marriage contracts. The modification of introducing the law of primogeniture to take place at a certain distant period, strikes me as very prudent; because I am fearful that nothing would tend more certainly to give disgust to a people, however disposed to submission, than an immediate alteration of ancient laws of inheritance, well known among them, and settled by usage into a kind of holy reverence.

A change of the law of dower, and of all that article of the French law concerning property between husband and wife in communauté might be rendered useless, if the proposed change on this head were carried into execution: for altho' the French law has its subtilities, and might be amended and simplified by the introduction of the English law of dower; yet the fact is, the law of dower is rendered ineffectual in England, by the creation of trusts, and frequency of marriage settlements: the French are particularly accustomed to make formal marriage contracts, even when a very small property is the object of those conventions, and among the lowest people.

In respect to wills, I approve the amending the English statute of frauds, and extending the same formalities to personal estates as to land. The proposed article, that no will shall be valid, which is not executed seven days before the death of the testator, with several amendments of the statute, will be of very great service, yet not sufficient, in my opinion, to prevent fraud, which the solemnities of the very forms, required by the above statute in the case of lands, have rather furnished with tools to intrench itself instead of defeating it. Nothing can effectually destroy fraud but the attestation of public persons; the lodging an authentic copy sealed with a magistrate, by the testator himself, and the revocation as formal as the making of a will: all which I think is admirably well answered by confirming the French law, as in the printed extract, Tit. XIV. Art. I. If the distance of seven days between making the will and the death of the testator were added, in order to give validity to an act requiring so much deliberation as a last will, it might be still better, and that even the party should have appeared at some place of public worship, and according to the Scotch law, at market, if there is one, in the interval between making his will and before his death.

The English law of distribution of personal estates in case of intestacy, I conceive to be a very good law, because very clear and very equitable. It seems unreasonable that the English settlers should submit to the French law in regard to personal, however they may acquire lands under the French law, now proposed to be adopted, so as

[1] See note 3, p. 331.

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to be considered hereafter as the English common and local law of the province. An uniformity of the law of personal estate would be extremely convenient and useful for all the inhabitants in a commercial country, and it would prevent great confusion when Canadian and English families come to be more mixed. As lands are a permanent, but personal is a floating property, the laws relative to them may well be made different; the policy which regards the encouragement of personal industry and commerce on one hand, and the permanency of landed possession, for the purpose of keeping up degrees of subordination in the subject, and for the better tillage and military defence of a kingdom on the other hand, dictates this distinction.

At the same time I conceive that the French laws of distribution of personal property, in cases of intestacy, and the legitime have a great deal of equity; yet with respect to the partage of their lands among all the children, without regard to primogeniture, it is attended with great inconveniencies to themselves. Nothing reduces the families of the ancient French seigneurs to misery more than the division and subdivision of their lands by their own law; a law, which though it appears at first to breathe more the spirit of democracy than of monarchy, yet it is in fact calculated for a military government only; because nobles so reduced can and will only live by the sword*. The allotments to the under tenants in Canada are about eighty acres, just sufficient in that cold country for summer pasture and winter fodder, for the cattle of one family. I have no objection to any middle system between the French and English law, better calculated for keeping up a sort of yeomanry or gentry, with estates or seigniories as now allotted, of about two or three hundred pounds a year when well cultivated, and to be indivisible; provided that it is right to new model the colony all at once. Probably every year, as more remote from the conquest, will lessen the subordination of the people, and may encrease to your Majesty's government, the difficulties of any future reformation, of both the law of England, and of France. The propositions of Mr. Mazeres on this head, the reflection of governor Carlton on the close of his letter, No. 5.[1] (proposing a few companies of Canadian foot and officers) upon the effects of division and subdivision of lands in every generation; the idea of the French government in the arret quoted, but impracticable to execute, and the laws of Normandy, which agree in part with the propositions of Mr. Mazeres, are reasons in favour of this change. Whether it may be a measure fit at the present, or at a future time, and by what authority to be carried into execution, must be submitted to the opinion of those persons who are best acquainted with the disposition of the inhabitants, and the state of the colony in the present partitions, and to your Majesty's royal wisdom, upon the question of the present expediency. The detriment to the French colonies, as an obstacle to the clearing and cultivation of more lands, arising from the French law of partition, is so strongly painted by a French writer[2] of great authority and abilities, that his opinion appears to me to be conclusive: I have therefore given the whole of his opinion in the margin†.

*Des les premiers jours de la colonie, on l'avoit comme étouffée au berceau, en accordant à des officiers à des gentilhommes un terrein de deux à quatre lieues de front sur un profondeur illimitée. Ces grands propriétaires hors d'état par la mediocrité de leur fortune et le peu d'aptitude à la culture, de mettre en valeur de si vastes possessions, furent comme forcés de les distribuer à des soldats ou à des cultivateurs, à charge d'une redevance perpetuelle. C'etoit introduire en Amérique une image du governement féodal qui fut long temps la ruine de l'Europe. Histoire Politique, tom. vi. p. 143.

† Qui le croiroit? Une loi qui semble dictée par la nature même, qui se presente au cœur de l'homme juste et bon: qui ne laisse d' abord aucun doute à l'esprit sur la rectitude et son utilité: cette loi cependant est quelquefois contraire au maintien de nos societés: elle arrête les progrés des colonies, les écarte du but de leur destination; et de loin elle prepare leur chûte et leur ruine. Qui le croiroit? C'est l'egalité de partage entre les enfans ou les coheritiers. Cette loi si naturelle veut être abolie en Amerique.

Ce partage fût necessaire dans la formation des colonies. On avoit à défricher des contrées immenses. Le pouvoit on sans population? et comment sans proprieté fixer dans ces regions éloignées et déserts des hommes qui les plus part n'avoient quitté leur patrie que faute de proprieté. Si le governement leur eut refusé des terres ces avanturiers en auroient cherché de climat en climat, avec le désespoir de commencer des éstablissement sans nombre, dont aucun n'auroit pris cette consistance qui les rend utiles à la metropole.

Mais depuis que les heritages d'abord trop étendus ont eté reduits par une suite de successions et de partages soudivisés, à la juste mesure qui demandent les facilités de la culture; depuis qu' ils sont assez limités pour ne pas rester en friche par le défaut d'une population équivalente a leur étendue, *une division*

[1] See Carleton to Shelburne, Jan. 20th, 1768, p. 205.

[2] Abbé Raynal.

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There is one more observation which is to be made, before I dismiss the subject of landed inheritance, that both by the subtilities of the English and of the French laws, the commutation of landed property is rendered liable to much delay, difficulty and litigations on titles, and prevents its being brought into commerce so much as it might; which is a matter of the utmost importance in any commercial country, particularly in a new colony, where credit wants every sort of supply and foundation. The rêtrait lignager and feodal makes a part of the French law, whereby the lord or next heir must be parties consenting to the sale of every estate, and to have a right of lods and ventes of resuming and pre-emption within a year, which right is a twelfth part of the purchase-money, and cannot be taken away without injury to the proprietor, the lord having taken a small rent (originally from his under-tenant) with a view to these fines of alienation to a stranger, which are the great profit of all seignories. So that if the lord had not this power of resuming, he might be defrauded by a sale for a less pretended sum than was actually paid. These subtilities introduced however into the forms, often defeat the lord and the heirs; because the decisions of the courts of France, adapting their interpretation of the ancient existing laws to the wants and manners of the times, endeavour to sap all these obstacles, and to introduce by degrees, and by construction of law, an easy commutation of landed property, necessary in an age of commerce. If, therefore, the mode of tenure is to be changed, as it is proposed, some compensation ought to be given to the lord and heir, as in the case of extinguishing the heretable jurisdictions in Scotland. The leaving it in the power of a seigneur, at the age of majority, now made twenty-one by an ordinance, to change his tenure into common soccage, and descendible by the English or by some more convenient mode of inheritance adapted to the nature and cultivation of the lands in allotment, is an option to which no Canadian can have any objection.

Third Article. *A bill is proposed for the better raising and collecting his Majesty's revenue.*

On this subject it may be proper that cases touching the King's revenue, whether inward or outward, shall not be tried by juries. The facilities, the certainty and cheapness of collecting, and settling appeals concerning the land-tax in England, are an admirable example, how easily men may be reconciled to public burthens, if they are but complimented with the business of levying and judging of them themselves. As the supporting the province with all the necessary and executive parts of government depends upon raising an adequate revenue*; and as interested juries will always suffer to escape the persons of those who defraud it; a British parliament, so used as it is to the modes of the revenue laws in England, may easily be brought to introduce into Canada, some of the same modes of taxation as in England. If a certain number of the

ultérieure de terreins les feroit rentrer dans leur premier néant. En Europe, un citoyen obscur qui n'a que quelques arpens de terre, tire souvent un meilleur parti de ce petit fonds, qu'un homme opulent des domaines immenses que le hazard de la naissance ou de la fortune a mis entre ses mains. En Amerique, la nature des denrées qui sont d'un grand prix, l'incertitude des récoltes peu variées dans leur espece, la quantité d'esclaves, de bestiaux, d'utensiles nécessaires pour une habitation: tout cela suppose des richesses considerables qu'on n'a pas dans quelques colonies, et *que bientôt on n'aura plus dans aucune* si le partage des successions continue à morceler, à diviser de plus en plus les terres.

Q'un pere en mourant laisse une succession de trente mille livres de rente. Sa succession se partage egalement entre trois enfans. Il seront tous ruinés si l'on fait trois habitations: l'un parcequ'on lui aura fait payer cher les bâtimens, et qu'à proportion il aura moins de negres et de terres; les deux autres parcequ'ils ne pourront pas exploiter leur heritage sans faire bâtir. Ils seront encore tous ruinès, si l'habitation entiere reste à l'un des trois. Dans un pais où la condition du crèancier est la plus mauvaise de toutes les conditions, les biens se sont élevés à une valeur immodérée. Celui qui restera possesseur de tout sera bien heureux, s'il n' est obligé de donner en intérêts que le revenu net de l'habitation. Or comme la premiere loi est celle de vivre, il commencera par vivre et ne pas payer. Ses dettes s'accumuleront. Bientôt il sera insolvable; et du désordre qui nâitra de cette situation, on verra sortir la ruine de tous les cohéritiers. L'abolition de l'egalité des partages est la seul remede à ce désordre. Histoire Politique, tom. vi. p. 155, 156, 157. The author goes on to prove that the great load of debts due both within the French colonies, as well as to the mother country, which ruins all their establishments, is occasioned by the law of partition and subdivision of lands *ad infinitum* in successions.

* L'administration des finances ne percevoit au Canada que quelques foibles lods et ventes. Une legere contribution des habitans de Quebec et Montreal pour l'entretien des fortifications de ces places, des droits, mais trop forts, sur l'entrée, sur la sortie des denrées et des marchandises; tous ces objets ne produisoient au fix en 1747 qu'un revenu de deux cens soixante mille deux cens livres. Histoire Politique, tom. vi. p. 143.

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principal land-holders of the Canadian seigneurs were to be appointed, together with his Majesty's governor and judges, to be commissioners, with the title of tres illustres, or right honourable, to hear and determine finally all matters and causes touching the receipt and collection of all taxes and inland duties raised, or to be raised, fines of seigniories, and other dues of his Majesty's seignioral rights (concerning which difficulties have been made) and revenue of what nature or kind soever, it would, together with a competent salary, be a flattering circumstance to the Canadian landed gentry who should have these commissions, and would serve effectually to prevent evasions of the revenue laws of any sort, now or hereafter, on the part of the commercial inhabitants, chiefly English, and who are the people most tempted to evade them. But this regulation should by no means extend to take away from the admiralty court its jurisdiction concerning duties and forfeitures, under the acts of trade; but that the officers of the crown may sue there as usual, and as they shall judge proper: but with a special clause, that in all cases where, by the acts of trade, his Majesty is intitled to any part of the forfeiture, all such causes shall be carried on, both in the first and second instance, in the name of his Majesty's advocate-general, in order to prevent collusive desertion of the cause, or appeal, on one side, or unjust harrassing of the subject on the other. This will be agreeable to the practice in England, where all such causes are carried on in the court of Exchequer, in the name of his Majesty's attorney-general, by act of parliament.

Under the articles of revenue, the proposition of colonel Carlton, Appendix, No. 12. seems very proper to be established. That all vessels coming up the river shall be obliged to enter at Quebec, and shall not break bulk at any place before they arrive there.

The proposed duty upon rum will also deserve the consideration of government; and it is understood, that there is already some bill prepared upon this head, and now under consideration of the board of treasury.

There are very able informations on the subject of duties in this province, in a private paper of Mr. attorney-general Mazeres.

As it appears that your Majesty's governors have omitted to require the oaths of fealty and homage, legal doubts have been started, whether the fines to the crown, upon the alienation of lands, and other seignioral rights, are due till such fealty and homage have been done: it should therefore make a part of the bill touching the revenue, that all dues heretofore paid to the French king, whether arising out of lands, or under any other denomination whatsoever, are payable and to be paid to your Majesty, your heirs, and successors, unless your Majesty shall, of your royal grace and favour, remit the same for the greater encouragement of your new subjects.

The seigneur-paramount has what is called the quint. To the seigneurs, the fines are a twelfth part of the real purchase-money bona fide paid; and if the vendor pays it immediately, two thirds of a twelfth only are taken, which are equivalent to an eighteenth of the whole purchase-money. The fluctuation of property has been so great since the conquest, that the fines of alienation have been very beneficial to the lords, and consequently there must be considerable sums due to your Majesty on the same account.

Fourth article. *A bill is proposed for giving leave to your Majesty's Roman catholic subjects in the said colony, to profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permit, which are already in force, and antecedent to the definitive treaty of peace, concluded at Paris, 10th February 1763, and for the better maintenance of the clergy of the church of England already established in the said colony.*

The treaty gives the superiority to the laws of England: it understands them all to be introduced into the colony ipso facto. The treaty stipulates clearly that the laws shall not be *changed* in this article with your Majesty's assent, and by the national legislation, but shall stand as they did stand, as the law of the realm in being at the instant of the contracting.

It is then the question, how far the laws of England affect the case of the Romish religion? In England very much: if executed; in the colonies settled by ourselves, no notice has been taken of it: so some penal laws, in other cases of trading property and revenue, have been very lightly enforced there formerly, even when the colonies have been

expressedly mentioned. But if the penalties of the laws are not felt by the professors of the Romish religion in England, it is by connivance from humanity or policy, not to weaken or depopulate, that the laws are suspended but not abrogated.

The first thing that strikes upon this head, is an opinion, that the penal statute laws of England, in relation to religion, do not extend to the other British colonies, and so it seems to be agreed by many; and that the Roman catholic worship and profession of it therefore, sub modo, and in a certain way, may be permitted, or rather connived at in them, without breach of the fundamental laws of England, under restrictions.

If the exercise of the power of the papal see cannot be permitted in the ancient colonies of the crown by existing law, it is clear that it cannot be permitted in a new acquired colony, when the ceded colony is put by the treaty on the same footing with the ancient colonies, by leaving it to the laws of the realm.

With regard to Canada, in the fourth article of the treaty it is declared, *that his Britannic Majesty shall give the most effectual orders that his new Roman catholic subjects may profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permit.* I state the article in the French language, for the greater clearness and precision in arguing upon it. *Sa Majesté Britannique convient d'accorder aux habitants de Canada la liberté de la religion catholique, en consequence elle donera les ordres les plus precis et les plus effectifs pour que ses nouveaux sujets catholiques puissent* professer le culte *de leur religion selon* le rit *de l'Eglise Romaine*, en tant que *le permettent les loix de la Grande Bretagne.* By these terms it appears, that not the profession of the doctrines, but the profession of the exercise of external ceremonies is only stipulated for: and the article is very equivocal, whether that profession is to be public or private; for the word *profession* may be insisted upon either way: and as for the degree, the article is *en tant que, as far as,* and in *such degree, as the laws of Great Britain permit* at the instant of contracting. *Les loix de la Grande Bretagne* is a general term, and these words being in the plural number, and the verb *permettent* in the *present* tense, must mean consistently with the general system of laws of Great Britain, now existing in their totality; any of which, tacit or written, may operate with regard to this subject. The treaty considers the toleration as limitable in the degree and manner of it accordingly.

The makers of the treaty of Versailles, seem to have had in their eye the eleventh article of the treaty of Utrecht, respecting the cession of Minorca to the crown of Great Britain. In the capitulation of Minorca, there was no article respecting laws or religion; because general Stanhope took possession in the name of the archduke, as King of Spain. *Spondet insuper regia sua Majestas Magnæ Britanniæ sese facturum ut incolæ omnes insulæ praefatæ tam ecclesiastici quam seculares bonis suis universis et honoribus tuto pacatèque fruantur atque religionis Romanæ catholicæ liber* usus *iis permittatur, utque etiam ejusmodi rationes ineantur ad tuendam religionem praedictam in eadem insulâ, quæ à gubernatione civili atque a legibus Magnæ Britanniæ paenitus abhorrere non videantur. Moreover, her Britannic Majesty engages, that all the inhabitants of the said island, as well ecclesiastics as laity, shall enjoy, in quiet and safety, their properties and honours, and that the* free use *of the Roman catholic religion shall be allowed them; so that measures of such sort shall be entered upon for the protecting the said religion in the said island, which measures shall not appear to be absolutely inconsistent with the civil government, and the constitution of England.* Here the *use* clearly relates to the use of ceremonies. The fact is, the inhabitants of Minorca enjoy their religion, and their church government, which is something more, as effectually as if they remained under the crown of Spain; and the course of appeal lies, from the bishop of Majorca, who has the ecclesiastical jurisdiction as bishop of Minorca, although a subject of Spain, to the Pope himself. This suspense of the law of England, with respect to the people of Minorca, however does not alter it.

Now I conceive that the laws and constitution of this kingdom permit perfect freedom of the exercise of any religious worship in the colonies, but not all sorts of doctrines, nor the maintenance of any foreign authority, civil or ecclesiastical, which doctrines and authority may affect the supremacy of the crown, or safety of your

Majesty and the realm: for a very great and necessary distinction, as it appears to me, must be taken between the profession of the worship of the Romish religion, according to the rites of it, and its principles of church government. To use the French word, *the culte*, or forms of worship or rituals, are totally distinct from some of its doctrines; the first can, may, and ought, in my humble opinion, in good policy and justice to be tolerated; the second cannot be tolerated.

The twenty-seventh article of the capitulation for the surrender of Montreal, and the whole province of Canada, which is *on the demanding part* of the Canadians, best explains their own meaning and that of the treaty; the words are, *Demanded, that the free exercise of the Roman catholic religion shall subsist entire*, in such manner, *that all the people shall continue to assemble in churches, and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly.*[1] And so far (taking this to be the true sense of the treaty demonstrated by those who are to have the benefit of it, agreeably to their petition) I think a British act of parliament may go in terms for the toleration of the form of worship, in manner and degree, without breach of the fundamental laws of the constitution; and it is a sufficient answer to all the world, to say, the contracting parties have the stipulation executed in the manner exactly as demanded, and no other.

But in a question of this kind, before it can be said that the whole system of the church of Rome, not only of its ceremonies, but of its doctrines, can be tolerated by the laws of England, antecedent to the conquest and treaty, which refers back to them, it must be considered what the system of the Romish church actually is; not only *as controuled in France by the sovereign and civil power, but as the great political system of the court of Rome with all its pretensions.*

With respect to the ritual, it is calculated for the eyes and the ears of an ignorant multitude, and not for the head or the heart, while it is in an unknown tongue. Yet such as it is, there is no great political consequential evil can follow from this culte, or mode of worship, being suffered to remain among such a people. It is innocent enough; and it would be cruel as well as unjust, to deprive them of the pleasure and comfort of religious rites in their accustomed way.

The exercise of the Romish worship being therefore politically fit to be tolerated in Canada, the question is, is it equally fit to tolerate all the doctrines of the Romish church, or the ecclesiastical establishments, and powers for the support of the doctrines?

To this I answer no: and for this plain reason, because the Romish religion itself (of which the conduct of France in many instances in history, with respect to conquered places, affords sufficient example) *will neither tolerate nor be tolerated.* In some of the articles of its system, on the presumption of its being the dominant system among the several states of Europe professing Christianity, it will give no quarter, and therefore it cannot take it without the destruction of the giver.

In order to judge politically of the expediency of suffering the Romish religion to remain *an established religion of the state* in any part of your Majesty's dominions, the Romish religion (I mean its doctrines, not its ceremonies) ought to be perfectly understood.[2] * * * * * * * * *

[1] See Articles of Capitulation, Montreal, p. 14 & 25.

[2] The remainder of this report, as explained in note 1, p. 310, is omitted.

CRAMAHÉ TO DARTMOUTH.[1]

QUEBEC 22^{d} June 1773.

MY LORD! Your Lordship is pleased to mention in your Dispatch No. 4.,[2] that the Civil Constitution and other necessary Arrangements for this Province were under the Consideration of His Majesty's Privy Council; I most sincerely wish for the Good of the King's Service, and the Happiness of the People, that Matter may be soon brought to a final Conclusion—

It has ever been my Opinion, I own, that the only sure and effectual Method, of gaining the affections of His Majesty's Canadian Subjects to His Royal Person and Government, was, to grant them all possible Freedom and Indulgence in the Exercise of their Religion, to which they are exceedingly attached, and that any Restraint laid upon them in Regard to this, would only retard, instead of advancing, a Change of their Ideas respecting religious Matters; by Degrees the old Priests drop off, and a few years will furnish the Province with a Clergy entirely Canadian; this could not be effected without some Person here exercising Episcopal Functions, and the Allowance of a Coadjutor will prevent the Bishop's being obliged to cross the Seas for Consecration and holding Personal Communication with those, who may not possess the most friendly Dispositions for the British Interests—

I am happy in the Approbation my Conduct in regard to the Franciscan Friar has received, and the manner, in which Your Lordship is pleased to express yourself on the Occasion, calls for my very sincere and hearty Thanks—[3]

I have the Honor to be with the greatest Respect
My Lord!
Your Lordship's
Most Obedient and
Most Humble Servant
H. T. CRAMAHÉ

Earl of Dartmouth
One of His Majesty's Principal Secretaries of State.

DARTMOUTH TO CRAMAHÉ.[4]

WHITEHALL December 1^{st} 1773.

LIEUT-GOVR. CRAMAHÉ,

SIR,

Your Dispatches numbered from 4 to 10 inclusive have been receiv'd and laid before The King, and I have the Satisfaction to Acquaint you that the Affairs of Canada & the arrangements necessary for the adjustment of whatever regards the Civil Government of the Colony are now actually under the immediate Consideration of His Majesty's Servants, and will probably be settled in a very short Time.

[1] Canadian Archives, Q 9,p.51. William Earl of Dartmouth succeeded Lord Hillsborough as Secretary of State for the Colonies in August 1772. According to the official entry, "The Earl of Hillsborough Resigned the Seals on the 13^{th} Aug^{t}: 1772 and the Earl of Dartmouth Received the Seals the following Day." Q 12 A,p.105. He retained the office till the beginning of 1776. This was the Lord Dartmouth who formed the famous collection of Mss. known as "The Dartmouth Papers," in which many important documents relating to the American colonies, including Canada, are preserved, and from which several important papers in the present volume are copied.

[2] Referring to Dartmouth's despatch of Dec. 9^{th}, 1772. See Canadian Archives, Q 8,p.220.

[3] Referring to Cramahé's action in the case of an Irish Franciscan friar who came to Quebec from the island of St. Johns (Prince Edward Island) seeking employment which Cramahé refused; but paid his passage to Europe. See Cramahé to Dartmouth, Nov. 11th, 1772; Q 9,p.4. Also Dartmouth's approval, Q 9,p.7.

[4] Canadian Archives, Q 9,p.157.

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You may be assured that I will not fail in this Consideration to urge the Justice and Expediency of giving all possible Satisfaction to the new Subjects on the Head of Religion; and to endeavour that the Arrangements with regard to that Important part of their Interests be established on such a Foundation that all Foreign Jurisdiction be excluded, and that those professing the Religion of the Church of Rome, may find within the Colony a resource for every thing essential to the free Exercise of it, in the true Spirit of the Treaty.

The Limits of the Colony will also in my Judgement make a necessary part of this very extensive Consideration.

There is no longer any Hope of perfecting that plan of Policy in respect to the interior Country, which was in Contemplation when the Proclamation of 1763 was issued;[1] many Circumstances with regard to the Inhabitancy of parts of that Country were then unknown, and there are a Variety of other Considerations that do, at least in my Judgement, induce a doubt both of the Justice and Propriety of restraining the Colony to the narrow Limits prescribed in that Proclamation.

His Majesty's Subjects therefore may with confidence expect that an Attention will be shewn to their wishes in this respect, and such Attention is more particularly due to them from the great Candour & Propriety of their Proceedings upon the Application from Governor Tryon for continuing the Line of 45 from Lake Champlain to the River St. Lawrence.[2]

The Ordinance providing for the Administration of Justice in Mr. Hey's absence,[3] appears in the general view of it, to be conformable to what was wished on that head, but I shall avoid entering into any particular consideration of it until Mr. Hey's Arrival.

I am to presume that nothing was left undone that could be effected to bring Mor Ramsay to that Punishment his atrocious Crime deserved,[4] and I lament his Escape the more from the account I have received from Sir William Johnson of other murthers committed near Niagara, and particularly of the Murther of Four Canadian Traders by some Seneca Indians.

Your Conduct in regard to the Complaints of the Indians of Sault St. Louis and the Lake of the Two Mountains,[5] and your Humanity in assisting them in their Distress, are very much approved by the King, who wishes that every step may be taken with regard both to his new Subjects and to the Savages in connection with them, that may have the effect to attach them more closely to the British Interests.

Mor. Baby . one of His Majesty's new subjects lately arrived here from Canada, has delivered me a Letter from them, inclosing a Petition to The King on the subject of their present precarious situation: This Petition has been presented to His Majesty,

[1] The reasons for this plan are given in the Report of the Lords of Trade to the King in Council, Aug. 5th, 1763. See p.110. The same subject was discussed in 1767, with reference to the reasonable claims of all the American Colonies to the unorganized territory in their rear. See Shelburne to Lords of Trade Oct. 5th, 1767. Calendar of Home Office Papers, 1766-69, No. 568.

[2] Referring to the proceedings as recorded in the Minutes of Council at Quebec, with reference to the proposals received from Governor Tryon of New York to complete the boundary line. See Minutes of Council, 8th, Feb. and 22nd Feb., 1771; Q 8,p.41 & 46. See also, correspondence and proceedings of Council; Q 9,pp.91,96 & 106a. The agreement subsequently reached between Sir Henry Moore, successor to Governor Tryon, and the Commander in Chief of Quebec, fixed the boundary at latitude 45, as laid down in the Proclamation of 1763. This agreement was ratified by the King in Council.

[3] In a letter to Lt. Governor Cramahé, April 10th, 1773, Dartmouth enclosed "a Sign Manual of His Majesty" permitting Chief Justice Hey to return to Britain, on account of his health, and indicating that, should he avail himself of the privilege, the Lt.Gov. might pass a temporary ordinance to provide for the discharge of his duties by a commission. See Q 9,p.15, also p. 70. This was accomplished by an ordinance entitled, "An Ordinance, For establishing a Court of Appeals during the absence of the present Chief Justice, and for Ascertaining the Powers of the Commissioners for Executing the Office of Chief Justice." Q 9,p.111.

[4] Ramsay was accused of the murder of an Indian near Niagara and his trial was appointed for Sept, 1773: See Q 9,p.34. Cramahé subsequently reports that he was acquitted for lack of evidence and that his acquittal had a bad effect upon the Indians. He refers also to the murder of Canadians by the Senecas: See Q 9,p.106.

[5] The Indians of Sault St. Louis and Lake of Two Mountains complained of the unsettled boundaries of their reserves, and also of the rum traffic. See Cramahé to Dartmouth, Q 9,p.34.

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and most graciously received, and is ordered by His Majesty to be referred to the Consideration of His Majesty's Confidential Servants, together with the other Papers relative to the State of that Colony.

I am &c^a

DARTMOUTH

MASERES TO DARTMOUTH.[1]

INNER TEMPLE, Jan. 4, 1774.

MY LORD, I herewith send your Lordship some papers which I have received within these few days from Quebeck, containing an account of the proceedings of the principal English inhabitants of the town of Quebeck concerning a petition they have presented to the Lieutenant-Governour and Council for a General assembly of the freeholders of that province.[2] They intend upon the Lieutenant-Governour's refusal of their petition, (which they expect,) to present it to his Majesty in Council. They have accompanied these papers with a civil letter to me, in which they declare they believe me to have the welfare of that province much at heart; which is indeed most true. I have sent your Lordship a copy of that letter;[3] but can assure your Lordship that I have had no hand (be it a right measure or a wrong one,) in exhorting them to make this application for an assembly, and did not in the least know that they intended it till I received these papers. I told Mr. Thomas Walker and Mr. Macaulay, two of the Committee for preparing this petition, when I saw them last Winter in London, that I thought that a legislative council, consisting only of protestants, and much more numerous than the present, and made perfectly independent of the Governour, so as to be neither removeable nor suspendible by him upon any pretence, but only removeable by the king in Council, would be a better instrument of government for that province than an assembly, for seven or eight years to come, and until the protestant religion and English manners, laws and affections shall have made a little more progress there, and especially than an assembly into which any Catholicks should be admitted. But as they have desired me to communicate this account of their proceedings to your Lordship, I have therefore sent them to you. I am almost well of the hurt in my leg which I received on the 10^th of November and which has confined me to my room almost ever since: and can now go out in a coach or chair, though I cannot walk yet: and therefore am ready to wait upon your Lordship whenever you may think that my attending you may be of any service in the business of the province of Quebeck, which I hear is now in hand. Your Lordship may command any thing that I can do further towards promoting so good a work.

I remain, with great respect,
Your Lordship's most Obedient
and humble servant

FRANCIS MASERES.

(Original)
Endorsed :—To
The Right Honb^le the Earl of Dartmouth,
in Charles Street, near St. James's Square.

1 Canadian Archives, Q 10, pp. 8–16. The documents which follow, with such variations as are noted, are given also in Maseres' "An Account of the Proceedings of the British, And other Protestant Inhabitants, of the Province of Quebeck, in North America, In order to obtain An House of Assembly In that Province." London; MDCCLXXV. pp. 4–10. This letter to Dartmouth, however, which introduces the account of the proceedings, and which explains Maseres' own attitude towards the proposal for an Assembly, is not given in that volume.

2 See the letter from Cramahé to Dartmouth which accompanies these petitions, p. 343.

3 See below, p. 343.

Ministry of Culture · Government of India

GSL

At a meeting of the British Inhabitants of the province of Quebec at the house of Miles Prenties Innholder in the upper Town — Quebec 30th October 1773—being Saturday.

Mr. John McCord on holding up hands was chosen president.

The first question, Whether it is not expedient to petition for a house of Assembly. Answer—Yeas 38—to 3 nays.

Resolved That a Committee of eleven be appointed and that seven of said number may be esteemed a full Committee (in case any of the Gentlemen named should be sick or out of Town) to draw up a Petition and lay it before another general meeting. And the following Gentlemen were accordingly regularly voted to form the said Committee viz—

William Grant	Jenkin Williams
John Wells	Thomas Walker
Charles Grant	John Lees
Malcolm Fraser	Zachary Macaulay
Anthony Vialars	John McCord
Peter Fargues	

The Committee then appointed to meet at Mr. Prenties's on Tuesday next at four o'Clock in the afternoon.

Malcolm Fraser was chosen Secretary to the Committee.

Resolved That a Copy of these Minutes be sent by the Committee to the Gentlemen of Montreal.

2 Novr 1773 At Prenties's

A Majority of the Committee having accordingly met vizt.

Thomas Walker	William Grant
Charles Grant	Jenkin Williams
John Lees	Zachary Macaulay
John McCord	Malcolm Fraser

The Committee judging it to be regular first to present a Petition to the Lieut. Governor in Council and not in the first Instance to the King have Resolved That a Petition be addressed and presented to the Lieut. Governor in Council and a Draft of such Petition having been accordingly framed—

It was further resolved That it be translated into French and that some of the principal French Inhabitants be requested to meet the Committee at four o'Clock on Thursday Evening next at Prenties's.

Resolved that a Copy of the above proceedings with a Copy of the Petition above mentioned be transmitted to Montreal by next post and addressed to Mr. Gray to be communicated to the Inhabitants of Montreal

Copy of a Letter of Invitation sent to the Canadian Gentlemen dated 2 Novr 1773.[1]

Messieurs—Les Affaires et la Situation actuelle de La Province ayant besoin que ses habitans y portent quelque attention Et nous sousignés ayant été nommés par une nombreuse assemblee des anciens sujets de sa Majesté comme un corps de Committé pour faire quelque chose a cet egard—Nous vous invitons de nous rencontrer au Taverne de Prenties Jeudi a quatre heures apres midi afin de vous communiquer nos idees et de scavoir les votres sur des matieres qui nous interessent egalement. Nous avons l'honneur d'etre &c

N.B. This Letter was signed by the whole eleven members of the Committee and addressed To Messieurs De La Naudiere—De Rigauville, De Lery, Cugnet—Perault—Duchenay, Decheneaux—Tacherau—Compte du pres—Frémont—Perras—Marcoux—Berthelot & Dufau of Quebec and to Monsr Tonnancourt of Trois Rivieres then at Quebec.

[1] In the mss. copy this letter is placed after the entry of Nov. 8th, but in Maseres' "An Account of the Proceedings" &c. it is placed in the chronological order which is here adopted.

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

CSL

4 Novr 1773 At Prenties's

The following members of the Committee having met Vizt.

Jenkin Williams
Charles Grant
John Lees
Zachary Macaulay
John Wells
William Grant
John McCord
Malcolm Fraser
Thomas Walker

And the following French Gentlemen having attended this meeting in consequence of the Invitation sent them viz.

Monsieur Decheneaux
– – Marcoux
– – Cugnet
– – Perrault
Monsr. Tonnancourt
– – Perras
– – Berthelot
– – Compte du prés

Mr. William Grant was chosen Chairman of the Committee, and a Translation into French of the Petition intended to be presented to the Lieut Governor being read, The Opinion of the French Gentlemen present was required as to the measure under consideration and after some conversation on the Subject The Question being put—
Whether they think it necessary (from what has been debated) to conveen their fellow Citizens.

It was unanimously voted in the affirmative Mr. Decheneaux & Mr. Perras have undertaken to conveen the new Subjects at two o'Clock on Saturday next

The Committee to meet on Monday next at Prenties's at six o'Clock in the Evening

8' Novr 1773.

The following Gentlemen met at Prenties's

Mr. Williams
Mr. Wm Grant
Mr. Lees
Mr. Fraser
Mr. Walker
Mr. McCord
Mr. Wells

It was resolved to write a Letter to Mr. Decheneaux to beg he would let the Committee know if the New Subjects had taken any measures in consequence of what was communicated to them at last meeting? and what these measures were. But Mr. Dechenaux being out of Town the Letter was sent to Mr. Perras who returned the Answer annexed.

Resolved that a Letter be sent by the Committee to Francis Maseres Esqr inclosing the above Minutes with a Draft of the Petition.—

The Committee to meet when Summoned by the Secretary as the business will depend on the Letters to be received from Montreal.—

Copy of the letter wrote to Mr. Perras 8th Novr 1773.

Monsr Les Messieurs du Committé assemblé chez Prenties vous prie d'avoir la bonté de les informer si les nouveaux sujets ont pris quelques mesures sur ce que vous a ete communiqué Jeudi dernier et si vous pouvez leurs faire part de Resolutions prises par vos concitoyens vous obligerez beaucoup ces Messieurs—On attend L'honneur de votre reponse par le porteur et J'ai l'honneur d'etre

Monsr

Votre très humble Serviteur

signé Malcolm ffraser

Follows Mr. Perra's answer

———

Quebec le 8—9bre 1773

Monsr. Le Depart precipitè de vaisseaux pour L'Europe ne m'a pas permis de repondre suivant mes desirs aux attentions de Messieurs du Committè, cependant j'ai vu quelques uns de mes citoyens qui ne me paroissent pas disposer a S'assembler comme

quelques uns d'entre nous le voudroient. Le grand nombre l'emporte et le petit reduit a prendre patience—

J'ai l'honneur d'etre &c

A true copy MALCOLM FFRASER
Secretary to the Committee.

LETTER OF THE COMMITTEE TO MASERES.[1]

QUEBEC 8th Novr 1773.

SIR As you appear to have the true Interests of this Country at heart, We take the liberty to trouble you with the Draught of a Petition which the English Inhabitants of the Province have determined to present to the Governor & Council. It is now the general opinion of the people (French & English) that an Assembly would be of the utmost advantage to the Colony, tho' they cannot agree as to the Constitution of it. The British Inhabitants of whom we are appointed a Committee are of very moderate principles. They wish for an Assembly ; as they know that to be the only sure means of conciliating the New Subjects to the British Government as well as of promoting the Interests of the Colony and securing to its Inhabitants the peaceable possession of their rights and propertys. They would not presume to dictate. How the Assembly is to be composed is a matter of the most serious consideration : They Submit that to the Wisdom of his Majesty's Councils. What they would, in the mean time, request you to do is to inform the Ministry and the Publick That a Petition is presented (for it will be so in a few days) to the Governor here to call an Assembly, And that if he does not grant their request they will immediately apply to His Majesty from whom they have the most sanguine hopes of a gracious Reception. They beg your Interest in promoting so laudable an Undertaking and hope you will excuse the liberty they have taken

We are with Esteem Sir
Your most obedient & most humble Servants

William Grant
Jenkin Williams
Thomas Walker
John Welles
John McCord
Zach. Macaulay
Chas. Grant
John Lees
Malcolm ffraser

To Francis Maseres Esqr.

CRAMAHÉ TO DARTMOUTH.[2]

QUEBEC 13th December 1773.

MY LORD!

Herewith inclosed, I transmit to Your Lordship, Copies of two Petitions, signed by some of His Majesty's old Subjects residing here and at Montreal, presented me the 4th instant, and of my Answer to them dated the 11th.

About six Weeks or two Months ago, a Mr. McCord, from the North of Ireland, who settled here soon after the Conquest, where he has picked up a very comfortable Livelihood by the retailing Business, in which he is a considerable Dealer, the Article of Spirituous Liquors especially, summoned the Principal Inhabitants of this Town, that are Protestants, to meet at a Tavern, where He proposed to them applying for a House of Assembly, and appointing a Committee of eleven to consider of the Method of making this Application, and to prepare and digest the Matter for them.

[1] Canadian Archives, Q 10, p.20–21.
[2] Canadian Archives, Q 10, p.22.

This Committee, of which Mr. McCord takes the lead, has had several meetings and fixed at last upon the Course they have now taken, of Petitioning the Lieutenant Governor in Council, and in case of a Refusal there, to Memorial His Majesty; The Committee having previously wrote to and engaged some of their Fellow Subjects at Montreal to second them in their Applications.

Mr McCord endeavoured all this Summer, and again since the appointment of the Committee, to persuade the Canadians to join the old Subjects in petitioning for an Assembly, used every Argument he could think of for that Purpose, and carried the first Draft set on Foot for it to a Canadian Gentleman of this Town to translate into French; the Canadians suspecting their only View was to push them forward to ask, without really intending their Participation of the Privilege, declined joining them here or at Montreal, but in the agitation they were thrown into by all this Negotiation, as well as Mr Maseres's Publications,[1] circulated here with great Industry, they thought themselves obliged to do something, tho' they could not well tell how, and this produced the Petitions already sent Home.

It may not be amiss to observe, that there are not above five among the signers to the two Petitions, who can be properly stiled Freeholders, and the Value of four of these Freeholds is very inconsiderable. The Number of those possessing Houses in the Towns of Quebec and Montreal, or Farms in the Country, held of The King or some private Seigneur, upon paying a yearly Acknowledgment, is under thirty.

In my Answer[2] I carefully avoided entering into any Discussion upon the Subject of their Petition, or taking notice of the Irregularity of their conduct, to endeavour to preserve them in good Temper, and to prevent them presenting their Requests through any other than the proper Channel, was the measure that appeared to me most eligible for the King's Service; I have therefore promised them, to forward to Your Lordship, the Memorial they intend presenting to His Majesty; when that is executed, and they are a little cooled, they will be more ready to attend to any Thing I may take Occasion to offer upon the Matter in private.

The whole of this Transaction sufficiently evinces how necessary it is to give Power and Activity to the Government of this Province; the Canadians are tractable and submissive, but if Matters were to remain here much longer in the loose Way they are in at present, there is too much Reason to apprehend, that it might be attended with bad Effects; A Confirmation of their Laws of Property, and Rights of Inheritance, after which they most ardently sigh, would be most satisfactory to them all, and prove a very great Means of attaching the Canadians effectually to His Majesty's Royal Person and Government—

I have the Honor to be
with the greatest Respect
My Lord!
Your Lordship's
Most Obedient and
Most Humble Servant

H. T. CRAMAHÉ

Earl of Dartmouth
One of His Majesty's Principal
Secretaries of State.

[1] Of these the first and last published, prior to this date, have already been given in this volume; see p.179, and p.228. Of the several other papers dealing with the laws and constitution of the Province of Quebec published before this date, some were reproduced in later volumes, especially in "An Account of the Proceedings" &c., others remained in their original form of issue, as the "Draught of an Act of Parliament for settling the Laws of the Province of Quebec," 1772.

[2] See below, p.346.

PETITION TO LT. GOVERNOR FOR AN ASSEMBLY.[1]

To the Honourable Hector Theophilus Cramahé, Esquire, His Majesty's Lieutenant Governor and Commander in Chief of the Province of Quebec, in Council.

The Petition of the Subscribers his Majesty's Antient Subjects the Freeholders, Merchants, Traders, and other Inhabitants of the said Province.

Humbly Sheweth,

That Whereas his Most Excellent Majesty by his Royal Proclamation bearing date at St. James's the Seventh day of October 1763 (out of his Paternal Care for the Security of the Liberty and propertys of those who then were, or should thereafter become Inhabitants of the four several Governments therein mentioned) Did publish and declare, that he had, in his Letters Patent, under his Great Seal of Great Britain, by which the said Governments were constituted; been graciously pleased to give express power and Direction to his Governors, that so soon as the State and Circumstances of those Governments would admit thereof: They should with the Advice and Consent of the Members of his Councils, Summon and Call General Assemblys within the said Governments, And that he had been graciously pleased to give power to his said Governors with the consent of his said Councils and the Representatives of the People to make, constitute, and Ordain, Laws, Statutes & Ordinances for the publick peace, welfare and good Government of those Provinces and of the People and Inhabitants thereof. And Whereas his most Excellent Majesty in pursuance of his said Royal Proclamation, by his Letters Patent to his Governors has been graciously pleased to give and grant unto them full power and Authority with the Advice and Consent of his said Councils, under the Circumstances aforesaid, to call General Assemblys of the Freeholders and Planters within their respective Governments. And Also Whereas your Petitioners (who have well considered the present state and Condition of this Province) do humbly conceive That a General Assembly of the People would very much Contribute to its peace, Welfare and good Government as well as to the Improvement of its Agriculture and the Extension of its Trade and Navigation; They do therefore most humbly pray your Honor (with the Advice and Consent of His Majesty's Council) to Summon and call a General Assembly of the Freeholders and Planters within Your Government in such Manner as you in your discretion shall judge most proper.

QUEBEC 29th November 1773.

Alexr Fraser
Simon Fraser
Adam Lymburner
Alexr Davison
Murdoch Stuart
Daniel Morison
Saml Jacobs
John Lees Junr.
Jams Price
Robt. Woolsey
Jacob Rowe
John Renaud
Michl Cornud
Simon Fraser Junr
Jas Hanna
Jonas Clark Minot
N. Bayard
John D. Mercier
Jenkin Williams
William Grant
John McCord
P. Fargues
Chas Grant
Malcolm ffraser
Zach. Macaulay
John Welles
John Lees
James Tod
Jas Cuming
Alexr Martin
D. Lynd
John Lynd
Dl Gallwey
Dunn Munro
Geo. King.
Richd Murray
Randle Meredith
Robt. Willcocks
J. Melvin
R. Hope
Henry Boone
John W. Swift
Charles Hay
Charles Le Marchant
Thos McCord
Jas Sinclair
Pr Mills
John Halsted
Lauch Smith
James Gordon
Ra. Gray

I do certify that the foregoing Petition is a true copy of the Original filed in my Office.

[1] Canadian Archives, Q 10, p.26. Given also in "An Account of the Proceedings" &c., p.11.

GSL

Quebec 16 December
1773.
Geo. Allsopp. D.C.C.

Endorsed :—Copy of the Quebec Petition presented 4th Decr 1773 In Lieut. Govr Cramahés (No. 11) of 13th December 1773.

The Montreal Petition the same as the preceding—with the following Signatures[1]— Montreal 29th Novemr 1773.

Edward Chinn	Alexr Paterson	Levy Solomons
John Thompson	James McGill	Alexr. Henry
Edwd Antill	James Dyer White	Ezekiel Solomons
R. Huntley	Lawrence Ermatinger	Richd Dobie
Danl Robertson	William Haywood	John Lilly
John Blake	James Finlay	Edwd Wm Gray
John Neagle	Wm McCarty	Thomas McMurray
Richd McNeall	Joseph Torrey	James Morrison
John Burke	Alexr Henry	Geo. Measam
Thomas Walker	Jas Bindon	J. Maurez
John Cape	Alexander Hay	Thomas Walker Junr.
Sam. Holmes	Joseph Howard	John Wharton
Jn Dumoulin	Geo. Singleton	Jacob Vander Heyden.

I do Certify that the foregoing Petition is a true Copy of the Original filed in my Office. Quebec 16 December 1773.

GEO. ALLSOPP D. C. C.

Endorsed :—Copy of the Montreal Petition —presented 4th Decr. 1773. In Lieut. Govr Cramahé's (No 11.) of 13th December 1773.

LT. GOVERNOR CRAMAHÉ'S REPLY.[2]

Gentlemen

The Subject of your Petition is a Matter of too much Importance, for His Majesty's Council here to advise, or me to determine, upon, at a Time, that, from the best Information, the Affairs of this Province are likely to become an Object of Public Regulation; The Petitions and my Answer shall be transmitted by the first Opportunity to His Majesty's Secretary of State.

(Signed) H. T. CRAMAHÉ

Quebec 11th Decr 1773.

1 In Maseres' "An Account of the Proceedings" &c., no mention is made of there being two petitions, and no distinction is made between the Montreal and Quebec lists of names, which are mingled together in a common list. The date of presentation is given as Dec. 3rd, whereas in Allsopp's certified copy it is given as the 4th.

2 This reply was framed and authorized by the Governor in Council, Dec. 11th, 1773. See Q 10, p. 38.

MINISTRY OF CULTURE GOVERNMENT OF INDIA
GL

PETITION TO THE KING.

To the Kings most excellent Majesty.[1]

The humble Petition of the Subscribers your Majesty's antient Subjects, Freeholders, Merchants and Planters in the Province of Quebec in North America.

Most humbly.
Sheweth.

That Whereas your Majesty by your royal Proclamation bearing Date at St. James's the seventh Day of October One thousand seven Hundred and Sixty Three was most graciously pleased to publish and declare "That out of your Majesty's paternal Care "for the Security of the Liberty and Properties of those who then were or should "thereafter become Inhabitants of the four several Governments therein mentioned (of "which this your Majesty's Province was denominated to be one) Your Majesty had in "the Letters Patent by which the said Governments were constituted given express "power and Direction to your Governors, That so soon as the State and Circumstances "of those Governments would admit of it, they should with the Advice of the Members "of your Majesty's Councils, summon and call General Assemblies within the said "Governments respectively, in such Manner and Form as is used and directed in those "Colonies and Provinces in America which are under Your Majesty's immediate Gov-"ernment. And also that your Majesty had been graciously pleased to give Power to "your said Governors with the Consent of your Majesty's said Councils and the Repre-"sentatives of the People, so to be summoned as aforesaid, to make, constitute, and "ordain Laws, Statutes and Ordinances, for the peace, Welfare, and good Government "of your Majesty's said Colonies, and of the People and Inhabitants thereof, as near "as might be agreeable to the Laws of England, and under such Regulations and "Restrictions as are used in other Colonies."[2] And Whereas it has graciously pleased Your Majesty in the Letters Patent of Commission to your Captain General and Governor in Chief, (and in Case of his Death, or during his Absence, in the Letters Patent of Commission to your Majesty's Lieutenant Governor) of this Province, to give and grant unto him full power and Authority, with the Advice and Consent of your Majesty's Council, so soon as the Situation and Circumstances of this Province would admit of it, and when and as often as Need should require, to summon and call general Assemblies of the Freeholders, and Planters within this Government, in such Manner as he in his Discretion should judge most proper.[3] And Whereas Your Petitioners, whose Properties real and personal in this Province are become very considerable, having well considered its present State and Circumstances, and humbly conceiving them to be such as to admit the summoning and calling a general Assembly of the Freeholders, and Planters Did on the Third Day of December Instant present their humble Petition to the Honourable Hector Theophilus Cramahé Esquire your Majesty's Lieutenant Governor and now Commander in Chief, stating as above and humbly praying that he would be pleased, with the Advice and Consent of your Majesty's Council, to summon and call a general Assembly of the Freeholders and Planters within this Government, in such Manner and as he in his Discretion should judge most proper; And your Majesty's said

[1] The Lt. Governor having, as anticipated, declined to grant the petition for an Assembly, the Committees of Quebec and Montreal prepared their petition to the King, as given here. Canadian Archives, Q 10,p.46. In the letter of Cramahé to Dartmouth, Jan. 19th, 1774, which accompanies this petition, he says that he suspects they have sent a duplicate of it to Maseres. Q 10,p.43. The Committees evidently had some doubts as to their petitions to the King reaching their destination if presented through the official channels only, for, as Cramahé had suspected, they sent copies of these to Maseres, then in London, to be presented through the Colonial Secretary. They had also written to their mercantile associates in London to solicit their assistance in presenting their case before the proper authorities. This correspondence is given in Maseres' "An Account of the Proceedings" &c., p.29.

[2] As may be observed by comparing this passage with the letter of the Proclamation, (See p.120, last paragraph.) this is not the exact wording of the portion quoted, but simply a paraphrase of it.

[3] See the section of the Commission to Governor Murray, authorizing the establishment of an Assembly, p.128.

Lieutenant Governor on the Eleventh Day of December Instant after having taken the said Petition into his Consideration, was pleased to inform your Petitioners, "That the "Subject of thier said Petition, was a Matter of too much Importance for your Majesty's "Council here to advise, or for him your said Lieutenant Governor to determine upon, "at a Time, that, from the best Information, the Affairs of this Province are likely to "become an Object of public Regulation; but that he would transmit the said Petition "by the first Opportunity to your Majesty's Secretary of State."[1]

Your Petitioners being fully convinced from their Residence in the Province, and their Experience in the Affairs of it, that a general Assembly would very much contribute to encourage and promote Industry, Agriculture and Commerce and (as they hope) to create Harmony and good Understanding between your Majesty's new and old Subjects Most humbly Supplicate your Majesty, to take the Premisses into your royal Consideration; And to direct your Majesty's Governor, or Commander in Chief to call a General Assembly in such Manner, and of such Constitution and Form as to your Majesty, in your Royal Wisdom, shall seem best adapted to secure its' Peace Welfare and good Government.

And your Petitioners as in Duty bound shall ever Pray &c.[2]

Quebec 31st December 1773

Jenkin Williams
John Welles
Randle Meredith
Alex^{r} Davison
John Lees Jun^{r}
N. Bayard
P^{r} Mills
John Halsted
Ja^{s} Tod
Arthur Davidson
John Majer
J. Melvin
Simon Fraser Jun^{r}
Dun^{n} Munro
W^{m} Lindsay
Dav^{d} Lynd
William Laing
W^{m} Keith
Charles Hay
Dan. Morison

Chas Grant
William Grant
Zach: Macaulay
John McCord
Adam Lymburner
John Renaud
Alex^{r}. Fraser
Jonas Clarke Minot
Murdoch Stuart
Mich. Cornud
Robt. Woolsey
D. Gallway
Thos McCord
John Ross
John Burke
Francois Smith
Rod^{k} McLeod
Godfrey King
John Saul
George Jinkins

Malcolm ffraser
John Lees
Alex^{r} Martin
Simon Fraser
Henry Boone
Charles Le Marchant
John D. Mercier
Jacob Rowe
Jas. Sinclair
George King
Jacob Smith
John Lynd
Ja^{s} Hanna
John White Swift
Ra. Grey
Robt. Mcfie
Alex^{r} Lawson
Frederick Petry
Francis Anderson
Hugh Ritchie
George Hips

(Original)
Endorsed:—In Lieut. Gov^{r} Cramahés (No. 13) of 19th Jany. 1774.

Montreal Petition the same as that of Quebec—with the following signatures—
Montreal 10th January 1774

Dan^{l} Robertson
John Wharton
Dumas
Samuel Morrison
George Singleton
Alex^{r} Paterson
Cha^{s} Paterson

Edm^{d} W^{m} Gray
Rich^{d} Huntley
Alexander Hay
John Lilly
John Porteous
John Thomson
Rich^{d} Dobie

Jean Etienne Waden
Hugh Farries
John Sunderland
Samuel Edge
Ab^{m} Holmes
Sam^{l} Holmes
Rich^{d} Livingston

[1] See above p.346.

[2] In Maseres' "An Account of the Proceedings" &c., pp.20-24, the petition is given as only from Montreal, dated Jan. 10th, though the list of names attached contains both the Quebec and Montreal signatures. Elsewhere, (see p.27) it is stated that there were two petitions.

Peter Arnoldi
Edmd Antill
G. Christie
Chabrand Delisle Minister
Pierre du Calvet J.P.
J. Grant
John Blake
Jams Blake
Lawrence Ermatinger
James Dyer White
James Morrison
Jean Bernard
Richd McNeall
Joseph Howard
Jacob Vander Heyden
Ezekiel Solomon
Levy Solomons
Jas. Doig
Jas. Finlay
John Gregory
Thomas Walker
Thomas Walker Junr.
Richd Walker
Geo. Measam
Philip Loch
William Weir
Edward Chinn
John Kay
Wm McCarty
Thomas M'Murray
Benjn Frobisher
Joseph Bindon
James McGill
JnoStenhouse
Alexr Henry
Solomon Mittleberger
Wm Murray
Alexr Henry
Jams Price
Willm Haywood
Jno Richardson
John Jones
Robert Simpson
James Frazer
James Noel
Jno Pullman
Robt. Cruickshank
John Neagle
Peter Forbes
Allan McLaclain
Nicholas Brown
John Trotter
Phillip Bruikman
Edwd Cox
Roger McCormick
John Marteilhe
James Stanley Goddard
Peter Mcfarland
Andrew Porteous
Jn Dumoulin
G. Young
Thomas Duggan
T. Duggan
William Aird
J. S. Nichol major
Daniel McKillip

In Lieut. Govr Cramahé's (No 13) of 19th Jany 1774.

MEMORIAL FROM QUEBEC TO LORD DARTMOUTH.

To the Right Honble the Earl of Dartmouth one of his Majesty's principal Secretarys of State.[1]

The Memorial of the Freeholders, Merchants Planters and others his Majesty's antient and loyal Subjects now in the District of Quebec in the Province of Quebec in North America.

Humbly Sheweth.

That after the Capitulation of Canada and the definitive Treaty of Peace by which this Province was ceded to Great Britain his Majesty was graciously pleased by his royal Proclamation of the 7th October 1763. to give express power & direction to his Governors of the four several Provinces therein mentioned, (whereof this Province is one) with the advice and Consent of the Members of his Councils, to summon and call general Assembly's, for making constituting and ordaining Laws Statutes and Ordinances for the public peace, Wellfare and good Government thereof as near as might be agreeable to the Laws of England And also was graciously pleased to declare and promise, That in the mean time and untill such Assemblys could be called all Persons inhabiting in or resorting to the said Colonies should have the enjoyment and benefit of the Laws of England.[2]

That your Memorialists thus encouraged, having settled themselves, purchased Lands, planted and improved them, and engaged deeply in Commerce in this Province, and humbly conceiving it at this Time seasonable & expedient to supplicate his Majesty

[1] Canadian Archives, Q 10,p.56. This memorial is not given in Maseres' "An Account of the Proceedings" &c. The briefer one from Montreal which follows this is given however. Nevertheless these memorials were evidently presented through Maseres, since they are not endorsed, as are the petitions to the King, as received through Cramahé. Moreover, in his letter to Dartmouth of Feb. 3rd., 1774 Cramahé indicates that they were not forwarded through him, since they were not communicated to him. See Q 10,p.53.

[2] See p.120, last paragraph.

to accomplish his most gracious Promise, Have prepared their most humble Petition to his Majesty[1] (which they take the liberty to transmitt herewith to Your Lordship) praying that he would be graciously pleased to order his Governor with the Advice and Consent of his Majesty's Council to call a general Assembly of the People in such manner and of such Constitution and form as his Majesty in his royal Wisdom shall think proper to direct.

Your Memorialists most humbly hope that his Majesty out of his royal and paternal Care for the Wellfare and happiness of all his loving & obedient Subjects will be graciously pleased to relieve them from the apprehensions they are under That their Property's may be endangered, And that they and their Posterity may lose the fruits of their labours by residing in a Country without any fixed or stable form of Government exposed to Ordinances which may be neither consonant with nor agreeable to the Laws of England, a Situation we presume equally inconvenient to the new as to us his Majesty's antient and loyal Subjects.

Your Lordships Memorialists are firmly but humbly of opinion that a power of Legislation vested in a Governor Council and Assembly of the People is the only permanent constitutional Mode of Government that should be established in this Province and from their own knowledge and Experience of its State since the Conquest, they are convinced that the sooner an Assembly is called, to act in conjunction with his Majesty's Governor and Council, the sooner, the Peace and good Government thereof will be settled on a firm and solid basis. No temporary Mode your Memorialists apprehend can so effectually attach and reconcile the new Subjects to His Majesty's august House and the British Constitution or be so grateful to his Majesty's antient subjects. Your Memorialists conscious of their own inability will not presume to point out how this Assembly should be composed and constituted. That is a matter in their opinion fitting only for the Wisdom and consideration of his Majesty and his learned Councils. But as it may be advanced by some Persons (who either are not so well acquainted with the present State of this Province as your Memorialists, or whose Interest in the welfare of it, is of a more transient nature) that it is not yet ripe for an Assembly, That the Kings old Subjects are but few in number, and that they possess but little Property in proportion to the new Subjects who are the Body of the People but of the Roman Catholick Communion? Your Memorialists who have well weighed and seriously considered these objections take the Liberty to assure your Lordship that in their humble opinion the Province is at this Time perfectly mature for the Reception of that Establishment, And that an Assembly to act in Conjunction with his Majesty's Governor and Council would in time give much more Satisfaction to the People, would point out more evidently the true Interest of the Colony, its Powers and Resources and be better able, than a Governor and Council, to make Laws Ordinances and Statutes suitable to their own Emergencies. Your Memorialists have the honour to assure your Lordship, That the Number and real Property of his Majesty's antient Subjects are not so triffling as may have been represented, for several of them possess the largest and best cultivated Seigniorys in the Province (The Lands of the religious Society's excepted) and most of them are proprietors of freehold Estates.[2] Their Personal Estates by far exceed those of the new Subjects. The Trade and Commerce of the Country ever since the Conquest and at this Time being principally carried on by his Majesty's old Subjects.[3]

The Settlement of the legislation of the Colony is not the only object your Memorialists have to request your Lordships Attention to. They beg leave to lay before Your Lordship the deplorable State it is in for want of Protestant Seminarys and Protestant Schools for the Education and Instruction of Youth, It is with regret that they see the rising Generation of Children born of Protestant Parents utterly neglected and daily

[1] See p.347.

[2] A partial list of the British owners of lands, including seigniories, in the Province of Quebec, in 1773, is given in the Dartmouth Papers; See Canadian Archives, M 384, p.233.

[3] Chief Justice Hey, in a letter to the Lord Chancellor given below, says on this point, referring to the English merchants, "with whom almost the whole trade of the country lyes, & which without them was & without them will continue except in a very few articles & those to no extent, a country of no trade at all." See Q 12, p.208.

exposed to the known assiduity of the Roman Catholic Clergy of different Orders who are very numerous in this Province and who from their own immense funds have lately established Seminarys alarming in their foundation (all Protestant Teachers of every Science being excluded therefrom), The Children of British Parents must therefore go without Instruction or attend these, For tho' his Majesty's antient Subjects are willing to contribute to the utmost of their Power to encourage Men of Learning and ability to come to reside among them, Yet that is insufficient without the aid and assistance of Government.

Your Memorialists have also the Honour to represent to Your Lordship, That the Trade Cultivation and Prosperity of the Colony have been much interrupted by the sequestration of the upper Indian trading Posts, Lake Champlain and the Coast of Labradore from this Government, by which not only the natural resources of the Province have been greatly restrained but many of the Inhabitants as well old as new Subjects have thereby been deprived of their personal Property and even of their real Estates which the latter held and enjoyed for many Years before the Conquest and which the former purchased on the faith of the Capitulation and Treaty of Peace, And Your Memorialists will venture to assure Your Lordship That if the Province is not restored to its antient Limits and the parts which have been dismembered from it reunited to that Government to which nature points they should belong, and all be put under some salutary and well judged Regulations. The Morals of the Indians will be debauched, and the Fur-Trade as well as the Winter Seal Fishery for ever lost not only to this Province but to Great Britain, as neither can be carried on to advantage but by the Inhabitants of Canada.

Your Memorialists might add much more in support of the Subject matter of this Memorial as well as on many other Matters very interesting to the Province, but as your Memorialists will not incroach on your Lordships Time and Patience they conclude by humbly and ardently praying your Lordship to be pleased to lay their most humble Petition herewith transmitted before his Majesty and humbly intreating Your Lordships Intercession and good Offices in that behalf as well as in behalf of the other important Objects pointed out to your Lordship in this their Memorial, And reposing themselves entirely on your Lordships known honour, Understanding and Uprightness.

They as in Duty bound will ever Pray &c—

Quebec 31st Decemr 1773.

A Committee named at a Meeting of his Majesty's antient Subjects residing in the District of Quebec.

Jenkin Williams
John Welles
John Lees
John McCord
Chas Grant
Malcolm ffraser
Zach.macaulay

(Original)

Endorsed:—Memorial of the Kings Ancient Subjects in the District of Quebec to His Majesty. R/ 1st June 1774.

MEMORIAL FROM MONTREAL TO LORD DARTMOUTH.

To The Right Honorable The Earl of Dartmouth one of His Majesty's Principal Secretaries of State.[1]

The Memorial of the Freeholders, Merchants, Planters and Others, His Majesty's Antient and Loyal Subjects now in the Province of Quebec,

Sheweth,

That your Lordships Memorialists encouraged by the Capitulation of Canada, confirm'd by the definitive Treaty of Peace and His Majestys Royal Proclamation of 7th of

[1] Canadian Archives, Q 10, p. 63. This, it will be observed, is simply a summary of the preceding petition from Quebec.

October 1763, did purchase Lands, Plant, Settle, and carry on Trade and Commerce in this Province, to a very considerable Amount, and to the manifest Advantage of Great Britain—in confident Expectation of the early Accomplishment of His Majesty's said Proclamation, giving express Power and Direction, to his Governour, with the Advice and Consent of his Council, to summon and call General Assemblies, to make, constitute and ordain, Laws, Statutes and Ordinances, for the Publick Peace, Welfare, and good Government of the said Province, as near as might be agreable to the Laws of England—For which Reasons Your Memorialists have drawn up and transmitted herewith Their most humble Petition to The King, praying his Majesty will, out of his Royal and Paternal Care, of all his Dutifull and Loyal Subjects, in this Province, be graciously pleased to relieve them from the Apprehensions They are under of their Property being endangered, and loosing the Fruits of their Labour; exposed to Ordinances of a Governor and Council, repugnant to the Laws of England, which take Place before His Majesty's Pleasure is known, and are not only contrary to His Majesty's Commission and private Instructions to his said Governour, but we presume equally Grievous to His Majesty's New and Antient Subjects.

Your Lordships Memorialists further see with Regret, the great Danger, the Children born of Protestant Parents are in, of being utterly neglected for want of a sufficient Number of Protestant Pastors, and thereby exposed to the usual and known Assiduity of the Roman Catholick Clergy, of different Orders, who are very Numerous in this Country, and who from their own immense Funds, have lately established a Seminary for the Education of Youth, in this Province, which is the more alarming as it excludes all Protestant Teachers of any Science whatever.

Wherefore Your Lordship's Memorialists humbly pray that you will be pleased to present, their said Petition to His Majesty—And also pray Your Lordship's Intercession and good Offices in that behalf.

And Your Lordships Memorialists as in Duty bound shall ever Pray

Montreal January 15th 1774

A Committee appointed at a General Meeting of the Inhabitants of Montreal.

Edwd Wm Gray
R. Huntley
Lawrence Ermatinger
Will Haywood
James M'Gill
Jas. Finlay
Edward Chinn

(Original)

Endorsed:—Memorial of the Kings Ancient Subjects in the District of Montreal to the Earl of Dartmouth. R/ 1st June 1774.

DARTMOUTH TO CRAMAHÉ.[1]

WHITEHALL May 4th 1774.

Lieut. Governor Cramahé

SIR,

I have received your Letters No. 13 & 14[2] & have laid them before the King, together with the two Petitions transmitted therewith.

The Manner in which the Petitioners have expressed their Wishes is decent & respectful, but I am fully convinced from your Account of the Steps taken to procure these Petitions that it was become highly necessary that the Arrangements for the Government of Quebec should be no longer delayed; And I have the Satisfaction to acquaint you that I did on Monday last present to the House of Lords a Bill for the Regulation

[1] Canadian Archives, Q 10, p. 55.

[2] Letter No. 13 is that of Cramahé to Dartmouth, of Jan. 19th, 1774, referred to in note 1, p. 347, enclosing the petitions to the King. No. 14 is that of Feb. 3rd, 1774, referred to in note 1, p. 349.

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of that Government,[1] which is calculated to lay the Foundation for those Establishments that I hope will give full Satisfaction to all His Majesty's Subjects & remove those difficulties with which the Administration of the Government in that Province has been so greatly embarrassed.

I am &c

DARTMOUTH.

CRAMAHÉ TO DARTMOUTH.[2]

(N° 17.) QUEBEC 15th July 1774.

Duplicate. MY LORD!

Your Lordship will herewith receive the Minutes of His Majesty's Council of this Province to the End of June last.

I am Honoured with Your Lordship's Circular Dispatch of 2d March,[3] and one of the 6th April[4] Numbered 11; The Event, which Your Lordship was pleased to notify in the former, affords great Satisfaction to all His Majesty's Loyal Subjects in this Province; I am extremely Happy in receiving my Royal Master's Approbation of my answer to the Petitioners for an Assembly.

His Majesty's old subjects in this Province, tho' collected from all Parts of His extensive Dominions, have in General, at least such as intend remaining in the Country, adopted American Ideas in regard to Taxation, and a Report, transmitted from one of their Correspondents in Britain, that a Duty upon Spirits was intended to be raised here by Authority of Parliament, was a principal Cause of setting them upon petitioning for an Assembly, and endeavouring to engage their Fellow Subjects to join therein.

Some of the Committee, with whom I conversed this Spring upon the Subject, acknowledge the Irregularity of their Assembling without the Consent, or Approbation of the King's Governor, that it was an ill example shewen to their Fellow Subjects, whom it was their Interest, if it were only upon Account of their great Superiority in Point of Numbers, to see continue in those Habits of Respect and Submission to which they had been accustomed, and, upon my stating these and some other Reasons in the strongest Manner I could, promised not to engage again in such a Business; From the Temper they seem to be in at present, and the tractable Disposition of the Canadians, I am Hopefull, they will wait with Patience, untill an Opportunity offers for perfecting those Arrangements, they have been made to expect, and which in certain Cases are much wanted, and therefore much to be desired.[5]

* * * * * *

I have the Honor to be with the greatest Respect
My Lord Your Lordship's
Most Obedient And
Most Humble Servant

H. T. CRAMAHÉ

Earl of Dartmouth
One of His Majesty's
Principal Secretaries of State.

[1] The Quebec Bill was introduced in the House of Lords by Lord Dartmouth, May 2nd, 1774.

[2] Canadian Archives, Q 10, pp. 79-81.

[3] Announcing the birth, on Feb. 24th, of Prince Adolphus Frederick, afterwards Duke of Cambridge.

[4] See Dartmouth to Cramahé, Q 10, p. 42, expressing approval of his reply to the petitioners for a House of Assembly.

[5] The remainder of the despatch refers only to Indian affairs and hence is omitted.

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PETITION OF FRENCH SUBJECTS.

A Petition of divers of the Roman-Catholick Inhabitants of the Province of Quebeck to the King's Majesty, signed, and transmitted to the Earl of Dartmouth, his Majesty's Secretary of State for America, about the Month of December, 1773, and presented to his Majesty about the Month of February, 1774.[1]

Au Roy.

'Sire, Vos très-soûmis et très-fidéles nouveaux sujets de la province de Canada ' prennent la liberté de se prosterner au pied du throne, pour y porter les séntiments ' de respect, d'amour, et de soûmission dont leurs cœurs sont remplis envers votre ' auguste personne, et pour lui rendre de très-humbles actions de grace de ses soins ' paternels.

' Nôtre reconnoissance nous force d'avoüer que le spectacle effrayant d'avoir été ' conquis par les armes victorieuses de vôtre Majesté n'a pas longtems excité nos regrets ' et nos larmes. Ils se sont dissipés à mesure que nous avons appris combien il est ' doux de vivre sous les constitutions sages de l'empire Britannique. En effêt, loin de ' ressentir au moment de la conquête les tristes effêts de la gêne et de la captivité, le ' sage et vertueux Général qui nous a conquis, digne image du Souverain glorieux qui ' lui confia le commandement de ses armées, nous laissa en possession de nos loix et de ' nos coûtumes. Le libre exercice de nôtre religion nous fût conservé, et confirmé par ' le traité de paix : et nos anciens citoyens furent établis les juges de nos causes civiles.[2] ' Nous n'oublirons jamais cet excès de bonté : ces traits généreux d'un si doux vain- ' queur seront conservés précieusement dans nos fastes ; et nous les transmettrons d'âge ' en âge à nos derniers neveux.—Tels sont, Sire, les doux liens qui dans le principe nous ' ont si fortement attachés à vôtre majesté : liens indissolubles, et qui se resserreront ' de plus en plus.

' Dans l'année 1764, votre Majesté daigna faire cesser le gouvernement militaire ' dans cette colonie, pour y introduire le governement civil. Et dès l'époque de ce chan- ' gement nous commençames à nous appercevoir des inconvenients qui résultoient des ' loix Britanniques, qui nous étoient jusqu'alors inconnues. Nos anciens citoyens, qui ' avoient réglé sans frais nos difficultés, furent remerciez : cette milice qui se faisoit une ' gloire de porter ce beau nom sous vôtre empire, fût supprimée. On nous accorda à la ' vérité le droit d'être jurés : mais, en même tems, on nous fit éprouver qu'il y avoit des ' obstacles pour nous à la possession des emplois. On parla d'introduire les loix d'An- ' gleterre,[3] infiniment sages et utiles pour la mére-patrie, mais qui ne pourroient s'allier ' avec nos coûtumes sans renverser nos fortunes et détruire entiérement nos possessions.— ' Tels ont été depuis ce tems, et tels sont encore, nos justes sujets de crainte ; tempérés ' néanmoins par la douçeur du gouvernement de vôtre Majesté.

' Daignez, illustre et généreux Monarque, dissiper ces craintes en nous accordant ' nos anciennes loix, priviléges, et coûtumes, avec les limites du Canada telles qu'elles ' étoient cy-devant. Daignez repandre également vos bontés sur touts vos sujets sans ' distinction. Conservez le titre glorieux de Souverain d'un peuple libre. Eh ! ne ' seroit-ce pas y donner atteinte, si plus de cent milles nouveaux sujets, soûmis à vôtre ' empire, étoient exclus de vôtre service et privés des avantages inestimables dont joüis- ' sent vos anciens sujets ?—Puisse le ciel, sensible à nos priéres et nos vœux, faire joüir ' vôtre Majesté d'un regne aussi glorieux que durable ! Puisse cette auguste famille

[1] This petition, which does not appear among the State Papers, together with the translation of it and the memorial which follows, are taken from Maseres' "An Account of the Proceedings" &c. pp.112–131. Concerning this Maseres says, "It is easy to see that the foregoing petition of the aforesaid French inhabitants of Canada has been made the foundation of the act of parliament above-recited." (The Quebec Act) p.131.

[2] See, however, the proclamations of Amherst and Murray, pp.31 & 33.

[3] For the basis of this change and the circumstances attending it, see Ordinance of Sept. 17th, 1764 and the notes thereon ; p.149.

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'd'Hanovre, à laquelle nous avons prêté les sermens de fidélité les plus solemnels, continuer à regner sur nous à jamais !

'Nous finissons en suppliant vôtre Majesté de nous accorder, en commun avec ses autres sujets, les droits et priviléges de Citoyens Anglois. Alors nos craintes seront dissipées : nous filerons des jours sérains et tranquilles ; et nous serons toujours prêts à les sacrifier pour la gloire de nôtre prince et le bien de nôtre patrie.'

'Nous sommes, avec la submission la plus profonde,
'De votre Majesté,
'Les très-obéissant, très-zélés, et
'très-fidéles sujets,

'Fr. Simonnet,
'Landriéve,
'De Rouville,
'De Rouville, fils,
'Longueuil,
Hertel Beau bassin,
'St. Disier,
'John Vienne,
'La Perier,
'Le Palliau,
'J. Daillebout de Cuisy,
'Gordien de Cuisy, fils,
'La Corne, fils,
'Picotté de Belestre,
'St. Ours,
'St. Ours, fils,
'Chevalier de St. Ours, l'eschaillon,
'Carilly,
'La Corne,
'Le Moine,
'Quinson de St. Ours,
'Guy,
'Pouvret,
'Contre cœur,
'St. George Du Pré,
'Des Riviéres,
'Louvigny de Montigny,
'Montigny, fils,
'Sanguinet,
'L. Porlier,
'Jean Crittal,
'J. G. Hubert,
'Pierre Panet, fils,
'Fr. Cariau,
'Pierre Foretier,
'Landriaux,
'L. Defoui,
'J. G. Pillet,
'La Combe,
'Fr. La Combe,
'Ch. Sanguinet,
'Jobert,
'J. Sanguinet,
'M. Blondeau,
'S. Chaboille,
'Eauge,
'J. G. Bourassa,
'J. La Croix,
'P. Panet,
'Giasson,
'J. B. Blondeau,
'Vallés,
'Le Grand,
'Pillet,
'L. Baby,
'P. Pillet,
'Hamelin, fils,
'Laurent Du Charme,
'Foucher,
'Berthelot,
'Lamber St. Omer,
'Méziére,
'De Bonne,
'St. Ange,
'Gamelin.

Translation of the foregoing Petition of divers of the French Inhabitants of the Province of Quebeck to the King's Majesty, which was signed about the Month of December, 1773, and presented to the King about February, 1774.

'SIR,

'Your most obedient and faithful new subjects in the province of Canada take the liberty to prostrate themselves at the foot of your throne, in order to lay before you the sentiments of respect, affection, and obedience towards your august person, with which their hearts overflow, and to return to your majesty their most humble thanks for your paternal care of their welfare.

GSL

'Our gratitude obliges us to acknowledge, that the frightful appearances of conquest 'by your majesty's victorious arms did not long continue to excite our lamentations and 'tears. They grew every day less and less as we gradually became more acquainted 'with the happiness of living under the wise regulations of the British empire. And 'even in the very moment of the conquest, we were far from feeling the melancholy 'effects of restraint and captivity. For the wise and virtuous general who conquered 'us, being a worthy representative of the glorious sovereign who entrusted him with the 'command of his armies, left us in possession of our laws and customs: the free exercise 'of our religion was preserved to us, and afterwards was confirmed by the treaty of 'peace; and our own former countrymen were appointed judges of our disputes concern-'ing civil matters. This excess of kindness towards us we shall never forget. These 'generous proofs of the clemency of our benign conqueror will be carefully preserved in 'the annals of our history; and we shall transmit them from generation to generation 'to our remotest posterity. These, Sir, are the pleasing ties by which, in the beginning 'of our subjection to your majesty's government, our hearts were so strongly bound to 'your majesty; ties which can never be dissolved, but which time will only strengthen 'and draw closer.

'In the year 1764, your majesty thought fit to put an end to the military govern-'ment of this province, and to establish a civil government in its stead. And from the 'instant of this change we began to feel the inconveniencies which resulted from the 'introduction of the laws of England, which till then we had been wholly unacquainted 'with. Our former countrymen, who till that time had been permitted to settle our civil 'disputes without any expence to us, were thanked for their services, and dismissed; and 'the militia of the province, which had till then been proud of bearing that honourable 'name under your majesty's command, was laid aside. It is true indeed we were admitted 'to serve on juries: but at the same time we were given to understand, that there were 'certain obstacles that prevented our holding places under your majesty's government. 'We were also told that the laws of England were to take place in the province, which, 'though we presume them to be wisely suited to the regulation of the mother-country 'for which they were made, could not be blended and applied to our customs without 'totally overturning our fortunes and destroying our possessions. Such have been ever 'since the æra of that change in the government, and such are still at this time, our 'just causes of uneasiness and apprehension; which however we acknowledge to be 'rendered less alarming to us by the mildness with which your majesty's government 'has been administered.

'Vouchsafe, most illustrious and generous sovereign, to dissipate these fears and 'this uneasiness, by restoring to us our ancient laws, privileges, and customs, and to 'extend our province to its former boundaries. Vouchsafe to bestow your favours 'equally upon all your subjects in the province, without any distinction! Preserve the 'glorious title of sovereign of a free people: a title which surely would suffer some 'diminution, if more than an hundred thousand new subjects of your majesty in this 'province, who had submitted to your government, were to be excluded from your 'service, and deprived of the inestimable advantages which are enjoyed by your majesty's 'antient subjects. May heaven, propitious to our wishes and our prayers, bestow upon 'your majesty a long and happy reign! May the august family of Hanover, to which 'we have taken the most solemn oaths of fidelity, continue to reign over us to the end 'of time!

'We conclude by intreating your majesty to grant us, in common with your other 'subjects, the rights and privileges of citizens of England. Then our fears will be 'removed, and we shall pass our lives in tranquillity and happiness, and shall be always 'ready to sacrifice them for the glory of our prince and the good of our country.

'We are, with the most profound submission,
'Your majesty's most obedient, most loyal, and most faithful
'subjects,

'Fr. Simonnet, &c. &c.'

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GSL

A MEMORIAL OF THE FOREGOING FRENCH PETITIONERS IN SUPPORT OF THEIR PETITION.

‘ Mémoire pour appuyer les demandes des très soûmis et très fidéles nouveaux sujets de sa majesté en Canada.

‘ L'Augmentation d'un si vaste païs, tel qu'il étoit lors du gouvernement François dont le nombre des habitants excéde actuellement plus de cent milles âmes, dont les dix-neuf vingtiémes sont nouveaux sujets ;— – l'avancement de son agriculture ;— – l'encouragement de sa navigation et de son commerce ;— — – – un arrangement à faire sur des fondements inébrantables, qui puisse déraciner la confusion qui y regne, faute de loix fixes et autorisées ;– – – sont des points présentement en considération qui sont dignes de la sagesse du gouvernement.

‘ La conservation de nos anciennes loix, coûtumes, et priviléges, dans leur entier, (et qui ne peuvent être changées ni altérées sans détruire et renverser entiérement nos titres et nos fortunes,) est une grace et un acte de justice que nous espérons de la bonté de sa majesté.

‘ Nous demandons avec ardeur la participation aux emplois civils et militaires L'idée d'une exclusion nous effraye. Nous avons prêté à sa majesté et à l'auguste famille d'Hanovre le serment de fidélité le plus solemnel : et depuis la conquête nous nous sommes comportés en fidéles sujets. Enfin nôtre zèle et nôtre attachement nous feront toûjours sacrifier nos jours pour la gloire de nôtre souverain et la sûreté de l'état.

‘ La colonie, telle qu'elle est fixée maintenant par la ligne de quarante cinq degrés, est trop resserrée dans ses limites.[1] Cette ligne, qui la borne, passe à environ quinze lieües au dessus de Montréal : et cependant c'est de ce seul côté que les terres se trouvent fertiles, et que peut s'étendre avec plus d'avantage l'agriculture. Nous supplions que, comme sous le tems du gouvernement François, on laisse à nôtre colonie touts les païs d'enhaut connus sous les noms de Missilimakinac, du Détroit, et autres adjacents jusques au fleuve du Mississippi.[2] La ré-union de ces postes seroit d'autant plus nécessaire à nôtre païs que, n'y ayant point de justice établie, les voyageurs de mauvaise foi, auxquels nous fournissons des marchandises pour faire le commerce avec les sauvages, y restent impunément avec nos effêts ; ce qui ruine entiérement cette colonie, et fait de ces postes une retraite de brigands capables de soulever les nations sauvages.[3]

‘ Nous désirons aussi qu'il plût à sa majesté re-unir à cette colonie la côte de Labrador, (qui en a été aussi soustraite,) telle qu'elle y étoit autrefois. La pesche du loup marin (qui est le seule qui se fait sur cette côte,) ne s'exerce que dans le fond de l'hyver, et ne dure souvent pas plus d'une quinzaine de jours. La nature de cette pesche, qui n'est connuë que des habitants de cette colonie ;– — – son peu de durée ; – – – et la rigueur de la saison, qui ne permet point aux navires de rester sur les côtes ;– – – combinent à exclurre touts les pescheurs qui viennent de l'Angleterre.

‘ Nous représentons humblement que cette colonie, par les fléaux et calamités de la guerre et les requents incendies que nous avons essuiés, n'est pas encore en état de payer ses depenses, et, par conséquent, de former une chambre d'assemblée. Nous pensons qu'un conseil plus nombreux qu'il n'a été jusques ici, composé d'anciens et nouveaux sujets, seroit beaucoup plus à propos.

[1] See note 2, p. 339.

[2] For the considerations which prevailed in fixing the boundaries of the Province of Quebec in 1764, see the Papers relating to the Establishment of Civil Government ; p. 105 & pp. 110–111.

[3] Both the French and British elements in Quebec favoured an extension of the boundaries of the Province as a means of placing in their hands a monopoly of the trade with the western Indians. The problem of the regulation of the Indian trade was the occasion of a great many despatches and reports with the most varied proposals. One of the most comprehensive presentations of the situation, as it affected all the northern colonies interested in the western trade and settlement, was furnished in a communication from Lord Shelburne to the Lords of Trade, dated Oct. 5th, 1767, including the views of Sir Jef. Amherst and Gen. Gage, together with all other papers available which might throw light on the subject. See Calendar of the Home Office Papers, 1766–69, No. 568.

CSL

'Nous avons lieu d'esperer des soins paternels de sa majesté, que les pouvoirs de ce conseil seront par elle limitées, et qu'ils s'approcheront le plus qu'il sera possible, à la douceur et à la modération qui font la base du gouvernement Britannique.

'Nous espérons d'autant mieux cette grace que nous possédons plus de dix dou ziémes des seigneuries et présque toutes les terres en rotures.

'Fr. Simonnet, &c., &c."[1]

Translation of the foregoing Memorial in Support of the Requests made by his Majesty's most obedient and most faithful new Subjects in Canada, in their Petition abovementioned.

'The improvement of so vast a country as Canada is, if considered as having the 'same boundaries as it had in the time of the French government; a country in which 'there are at present more than an hundred thousand inhabitants, of whom more than nine'teen in twenty are new subjects of the king;---the increase of agriculture in this 'country;---the encouragement of its trade and navigation;---a settlement of 'the laws by which its inhabitants are to be governed, built upon solid and immove'able foundations, so as to remove and cut up by the roots the confusion which at present 'overspreads the province in consequence of the want of clear and known laws established 'by an incontestable authority;---are points which are now proposed to the consider'ation of the British government, and are worthy objects of its attention and wisdom.

'The continuance of our ancient laws, customs, and privileges, in their whole extent, '(because it is impossible to change or alter them without destroying and totally over'throwing our titles to our estates and our fortunes;) is a favour, and even an act of 'justice, which we hope for from the goodness of his majesty.

'We ardently desire to be admitted to a share of the civil and military employments 'under his majesty's government. The thought of being excluded from them is fright'ful to us. We have taken the most solemn oath of fidelity to his majesty and the 'august family of Hanover: and ever since the conquest of the country, we have behaved 'like loyal subjects. And our zeal and attachment to our gracious sovereign will make 'us always ready to sacrifice our lives for his glory and the defence of the state.

'The province, as it is now bounded by a line passing through the forty-fifth degree 'of north latitude, is confined within too narrow limits. This line is only fifteen leagues 'distant from Montreal. And yet it is only on this side that the lands of the province 'are fertile, and that agriculture can be cultivated to much advantage. We desire 'therefore that, as under the French government our colony was permitted to extend 'over all the upper countries known under the names of Michilimakinac, Detroit, and 'other adjacent places, as far as the river Mississippi, so it may now be enlarged to the 'same extent. And this re-annexation of these inland posts to this province is the more 'necessary on account of the fur-trade which the people of this province carry on to 'them; because, in the present state of things, as there are no courts of justice whose 'jurisdiction extends to those distant places, those of the factors we send to them with 'our goods to trade with the Indians for their furs who happen to prove dishonest con'tinue in them out of the reach of their creditors, and live upon the profits of the goods 'entrusted to their care: which intirely ruins this colony, and turns these posts into 'harbours for rogues and vagabonds, whose wicked and violent conduct is often likely 'to give rise to wars with the Indians.

'We desire also that his majesty would be graciously pleased to re-annex to this 'province the coast of Labrador, which formerly belonged to it, and has been taken 'from it since the peace. The fishery for seals, which is the only fishery carried on 'upon this coast, is carried on only in the middle of winter, and sometimes does not last 'above a fortnight. The nature of this fishery, which none of his majesty's subjects 'but the inhabitants of this province understand; the short time of its continuance; and

[1] There follows the same list of names as that appended to the petition which precedes.

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'the extreme severity of the weather, which makes it impossible for ships to continue 'at that time upon the coasts; are circumstances which all conspire to exclude any 'fishermen from Old England from having any share in the conduct of it.

'We further most humbly represent that, by means of the ravages and calamities 'of the late war, and the frequent fires that have happened in our towns, this colony is 'not as yet in a condition to defray the expences of its own civil government, and con-'sequently not in a condition to admit of a general assembly. We are therefore of 'opinion that a council that should consist of a greater number of members than that 'which has hitherto subsisted in the province, and that should be composed partly of his 'majesty's old subjects, and partly of his new ones, would be a much fitter instrument 'of government for the province in its present state.

'We have reason to hope, from the paternal care which his majesty has hitherto 'shewn for our welfare, that the powers of this council will be restrained by his majesty 'within proper bounds, and that they will be made to approach as near as possible to 'the mildness and moderation which form the basis of the British government.

'We hope the rather that his majesty will indulge us in the above requests, because 'we possess more than ten out of twelve of all the seigniories in the province, and almost 'all the lands of the other tenure, or which are holden by rent-service.

'Fr. Simonnet, &c. &c.'

CASE OF THE BRITISH MERCHANTS TRADING TO QUEBEC.[1]

The Case of the British Merchants trading to Quebeck, and others of his Majesty's natural-born Subjects, who have been induced to venture their Property in the said Province on the Faith of his Majesty's Proclamation, and other Promises solemnly given.

The proclamation of October 1763.

The king's most excellent majesty was graciously pleased, by his royal proclamation[2] of the seventh of October, one thousand seven hundred and sixty-three, passed under the great seal of Great-Britain to invite his loving subjects, as well of his kingdoms of Great-Britain and Ireland, as of his colonies in America, to resort to the said province of Quebeck, and the other provinces then lately ceded to his majesty by the French king, in order to avail themselves, with all convenient speed, of the great benefits and advantages that must accrue therefrom to their commerce, manufactures, and navigation; and as an encouragement to them so to do, to publish and declare, that his said majesty had, in the letters patent under the great seal of Great-Britain, by which the new goverments in the said ceded countries had been constituted, given express power and directions to his governours in the said new colonies, *that so soon as the state and circumstances of the said new colonies would admit thereof, they should summon and call general assemblies within the said governments,* in such manner and form as is used and directed in those colonies and provinces in America which were under his majesty's immediate government; and that his majesty had also given powers to the said governours, with the consent of his majesty's councils of the said province, and the representatives of the people in the same, so to be summoned as aforesaid, to make,

[1] According to Maseres, this presentation of the case of the British merchants in London, "was drawn up at the desire of the said merchants, in the month of May last, at the time of passing the late Quebeck bill, and of which printed copies were distributed to several members of both houses of parliament, in order to give weight to a petition against that bill which these merchants at that time presented to the House of Commons in behalf of themselves and their correspondents and friends, the British inhabitants of the province of Quebeck." "An Account of the Proceedings" &c., p.201. The petition here referred to was presented in the House of Commons by Mr. Mackworth on May 31st. See Cavendish's Debates on the Quebec Bill, pp.74-75. The "Case" as here given is taken from Maseres' "An Account of the Proceedings" &c., p.202. Another copy, evidently from the same source, is given in the Dartmouth papers, M 385, p.393. There is no doubt, from the style of the document, that Maseres was employed by the merchants to state their case in due form.

[2] See p.119.

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constitute and ordain laws, statutes, and ordinances for the publick peace, welfare, and good government of his majesty's said colonies, and of the people and inhabitants thereof, as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and was pleased further to declare, *that in the mean time, and until such assemblies could be called as aforesaid, all persons inhabiting in, or resorting to, his majesty's said colonies might confide in his majesty's royal protection for the enjoyment of the benefits of the laws of England*; and that for that purpose his majesty had given power, under the great seal, to the governours of his majesty's said new colonies, to erect and constitute, with the advice of his majesty's councils of the said provinces respectively, courts of judicature and publick justice within the said colonies, for the hearing and determining all causes, as well criminal as civil, according to law and equity, *and as near as may be, agreeably to the laws of England.*

Provincial ordinance of Sept. 17, 1764.

And in pursuance of the said proclamation, and of the commission of captain-general and governour in chief of the said province of Quebeck, granted to major-general Murray,[1] in the following month of November, one thousand seven hundred and sixty-three, and by him received and published in the month of August of the following year, one thousand seven hundred and sixty-four, the said major-general Murray did, with the advice of his majesty's council of the said province, make and publish an ordinance of the said province on the seventeenth day of September, in the same year, one thousand seven hundred and sixty-four, for erecting and constituting courts of judicature[2]; and by the said ordinance did erect two principal courts of judicature, called the Courts of King's Bench, and Common Pleas; and did by the said ordinance give power and authority to the chief justice of the province, before whom the said court of King's Bench was to be held, to hear and determine all criminal and civil causes, agreeably to the laws of England, and the ordinances of the said province; and did likewise, by the said ordinance, direct and command the judges of the said second court, called the Court of Common Pleas, to determine all matters brought before them agreeably to equity, having regard nevertheless to the laws of England, as far as the circumstances and then present situation of things would admit, until such time as proper ordinances for the information of the people could be published by the governour and council of the said province, agreeable to the laws of England.

Provincial ordinance of November, 1764.

And on the sixth day of November, in the same year, one thousand seven hundred and sixty-four, another provincial ordinance was published by the said governour Murray, and his majesty's council of the said province, for the sake of quieting the minds of his majesty's new Canadian subjects, and removing the apprehensions occasioned by the said introduction of the laws of England into the said province,[3] by which it was ordained and declared, that until the tenth day of August then next ensuing, that is, in the year of our Lord one thousand seven hundred and sixty-five, the tenures of the lands, in respect of such grants as were prior to the cession of the said province, by the definitive treaty of peace signed at Paris, on the tenth day of February, one thousand seven hundred and sixty-three, and the rights of inheritance, as practised before that period, in such lands or effects of any nature whatsoever, according to the custom of the said country, should remain to all intents and purposes the same, unless they should be altered by some declared and positive law.

[1] See p.126.
[2] See p.149.
[3] See p.166.

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Conclusion drawn from the said proclamation and ordinances by the king's ancient & natural-born subjects.

And the said two ordinances have been transmitted to his majesty, and never disallowed by him, and are therefore generally understood by his majesty's British subjects in the said province, to have received the sanction of his majesty's royal approbation; and in consequence of the said two ordinances, together with the proclamation aforesaid of the seventh of October, one thousand seven hundred and sixty-three, and the two commissions of governour in chief of the said province, granted successively to major-general Murray and major-general Carleton, which seem in every part of them to pre-suppose that the laws of England were in force in the said province of Quebeck, being full of allusions and references to those laws on a variety of different subjects, and do not contain any intimation of a saving of any part of the laws and customs that prevailed in the said province in the time of the French government, we the British merchants trading to Quebeck, and all the ancient British subjects residing in the said province have been made to understand and believe, that the laws of England have been introduced into the said province, and that they have had the sanction of his majesty's royal word, that they should continue to be observed in the said province.

The petitioners are alarmed at the design of revoking the king's proclamation, and commission to his governour, &c.

We cannot therefore but express our surprise and concern at hearing that a bill is now brought into parliament, by which it is intended, that the said royal proclamation of October, one thousand seven hundred and sixty-three, and the commission under the authority whereof the government of the said province is at present administered, and all the ordinances of the said province, relative to the civil government and administration of justice in the same, and all commissions to judges and other officers of the same, should be revoked, annulled, and made void.

Credit given by the petitioners to persons residing in Canada upon the faith of the said proclamation, &c.

We humbly beg leave to represent, that many of us have, through a confidence in the said royal proclamation, and other instruments proceeding from, and allowed by, his majesty's royal authority, ventured to send considerable quantities of merchandize into the said province, and to give large credits to divers persons residing in the same, both of his majesty's new Canadian subjects, and of his antient British subjects, who have, through a like confidence in the said proclamation, resorted to, and settled themselves in, the said province. And that we have employed our property and credit in this manner, in a firm belief, that we should have the remedies allowed us by the laws of England for the security and recovery of it; and that if we had supposed the French laws, which prevailed in the said province under the French government, to be still in force there, or to be intended to be revived in the same, we would not have had any commercial connections with the inhabitants of the said province, either French or English. And therefore we beg leave to represent, that we think ourselves intitled, upon the mere grounds of justice, (without desiring any favour to be shewn us on the account of our being his majesty's antient, and faithful, and protestant subjects, that are attached to his royal person and government by every tie of religion, interest, and habitual duty and affection) to insist that, if it be resolved to persist in this new measure of reviving all the former laws of Canada concerning property and civil rights, and abolishing the laws of England that have prevailed there in their stead since the establishment of the civil government in one thousand seven hundred and sixty-four, the execution thereof may at least be postponed until we shall have had sufficient time to withdraw our effects from the said province, and obtain payment of the debts which are owing to us in the same, by the remedies and methods of trial allowed and appointed by the laws of England in that behalf; through a reliance on which remedies and methods of trial we were induced to venture our said effects there, and permit those debts to be contracted. And this time, we humbly represent, cannot well be less than three years.

They therefore desire that the intended revival of the French laws may at least be postponed for some time.

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Vindication of the king's former conduct in introducing the laws of England into Canada.

We further beg leave to represent, that we apprehend his majesty's former conduct in introducing the laws of England into the said province by his proclamation and other instruments aforesaid, to have been in no wise unusual, or severe, or particularly harsh, with respect to his new Canadian subjects, nor to have been unexpected by them, but to have been the natural and known consequence of the conquest and cession of the country to his majesty by the late peace, according to the policy of the crown of Great-Britain on the occasion of similar conquests in former times. And we particularly beg leave to observe, that the whole law of England has been introduced into the kingdom of Ireland, in consequence of the conquest of it by the arms of England, without any the least mixture of the antient Irish laws, even upon the subjects of tenures and descents of land : and no inconvenience has been found to follow from it ; but, on the contrary, the similitude of laws is at this day a strong ground of union and mutual affection between the inhabitants of the two countries. And the like has been done with respect to the principality of Wales ; in which the English law is the only law that has been allowed for more than two hundred years past : and the like good effects have followed from it. And in the last century, upon the conquest of the province of New-York, then called the New Netherlands, from the Dutch, the same policy was observed, and the Dutch laws were totally abolished, and the English laws introduced in their stead, which have prevailed there ever since. And yet, at that time, the Dutch settlers in that province were very numerous, and from them much the greater part of the present inhabitants are descended. And, in conformity to these examples, we did conceive his most gracious majesty to have intended to introduce the laws of England, by his proclamation aforesaid, into the four new governments of Granada, East Florida, West Florida, and Quebeck, instead of the French and Spanish laws, which had prevailed therein under the former governments. And we conceive this conduct of his most gracious majesty, to have been no way derogatory to the articles of capitulation, granted to his Canadian subjects by general Amherst, upon the surrender of the whole country to his majesty's arms in September, one thousand seven hundred and sixty[1] ; because, when the French general expressly demanded, in one of the articles of capitulation, "That the French and Canadians should continue to be governed according to the custom of Paris, and the laws and usages established for that country, and that they should not be subject to any other imposts than those that were established under the French dominion ;" the said general Amherst, in his answer to the said demand, declares, "*That they become the king's subjects ;*"[2] thereby avoiding to tie up and preclude his late majesty, and his royal successors, from making such changes in the laws and taxes of the said province, as to his royal wisdom should seem meet.

The same thing was done in Ireland ;

And in Wales ;

And in New-York.

A power of doing so in Canada was expressly reserved to the king by the capitulation.

The parts of the English law which the petitioners most particularly desire to be continued in the province.

We further beg leave to represent, that we are most especially anxious for the preservation of those parts of the English law which relate to matters of navigation, commerce, and personal contracts, and the method of determining disputes upon those subjects by the trial by jury, and likewise for those parts of it which relate to actions for the reparation of injuries received, such as actions of false imprisonment, and of slander, and of assault, and whatever relates to the liberty of the person, and most of all for the writ of habeas corpus, in cases of imprisonment ; which we take to be, in the strongest and most proper sense of the words, *one of the benefits of the laws of England*, of which his majesty has promised us the enjoyment by his proclamation above-mentioned, and which we apprehend to be a part of the English system of jurisprudence, to which our new Canadian fellow-subjects will not object.

[1] See Capitulation of Montreal, p.8.
[2] Capitulation of Montreal, articles 41 & 42 ; see pp.17-18 & 27.

The prosperous condition of the province since the introduction of the English law.

And we beg leave to represent, that the province of Quebeck has thriven exceedingly, both in agriculture and trade, since the establishment of the civil government of the province, and the introduction of the English laws into the same; having exported last year about three hundred and fifty thousand bushels of corn; whereas, in the time of the French government, they exported none at all, and produced hardly enough for their own subsistence.

The greater part of the trade of the province is carried on by the British inhabitants of it.

And we further beg leave to represent, that much the greater part of this trade is carried on by his majesty's old British subjects in the said province; by which they may justly claim to themselves the merit of having been the principal promoters of the late great improvement of the province.

The petitioners do not object to the revival, or continuance, of the French laws relating to landed property.

And we further beg leave to represent, that we by no means object to a revival or continuance of the former French laws concerning the tenures of land, and the methods of alienating and conveying land, nor even concerning the inheritance of land belonging to Canadians born, or to be born, of marriages already contracted; nor concerning dower, or the other civil rights of either men or women resulting from the matrimonial contract, so far as they relate to marriages already contracted. And we conceive that the revival of the French laws in these particulars, with full powers given to the Canadians of future times to continue them in their respective families at their pleasure by marriage-agreements, last wills, or deeds in their life-time, would be sufficient to give full satisfaction to the bulk of his majesty's new Canadian subjects, and make them acquiesce very chearfully in the general establishment of the laws of England, in conformity to his majesty's proclamation above-mentioned, upon all other matters.

Many of the British inhabitants of the province are possessed of considerable quantities of landed property in it.

And we further beg leave to represent, that several of his majesty's Old British subjects are possessed of a considerable quantity of landed property in the said province, and that others of them are daily becoming so: and hereupon we will venture to affirm, that sixteen of the seigniories of that province, and some of them the most valuable ones in the country, are in the hands of the said Old British subjects.[1]

Concerning an assembly of the freeholders of the province.

And we further beg leave to represent, that, in consequence of his majesty's most gracious promise contained in his proclamation aforesaid, that, as soon as the situation and circumstances of the said province would permit, an assembly of freeholders and planters of the same should be called by his majesty's governour thereof, which, in conjunction with the said governour, and his majesty's council of the said province, should have power to make laws and ordinances for the welfare and good government of the said province, we have constantly entertained hopes that an assembly of the freeholders of the same would soon be established, and that we should enjoy the benefits resulting from that free and equitable method of government in common with the inhabitants of the adjoining provinces of North-America.

The petitioners are alarmed at the clause for establishing a legislative council in the province.

And therefore we beg leave to represent, that we have been very greatly alarmed by that part of the bill now before parliament, which seems to cancel the said most gracious promise of our sovereign, and to deprive us of all hopes of obtaining the establishment of a general assembly of the freeholders of the said province, and to establish in the stead thereof a very different mode of government in the said province, by a legislative council, consisting of persons appointed by, and removeable at the pleasure of, the crown; more especially as the said new mode of government, (which we presume nothing but some urgent and very peculiar circumstances of necessity can be thought a sufficient reason for adopting) is not limited in the said bill to continue for only a certain small number of years, after which they might hope to have an assembly in the said province, agreeably

[1] See "List of British proprietors of Lands in the Province of Quebec, 1773." Dartmouth Papers, M. 384, p. 233. Twenty nine of these are designated as holding seigniories.

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to the said royal promise, but is established in very general terms, that remove that agreeable prospect out of their sight.

The want of a sufficient number of protestant landholders in the province to form an assembly has been hitherto alledged as the reason of the omission to call one.

We further beg leave to represent, that we have hitherto been made to understand, that the reason of the omission of his majesty's governours of the said province to call a general assembly of the freeholders of the same, from the first establishment of the civil government thereof, in the year one thousand seven hundred and sixty-four, to the present time, according to the powers and directions given them by his majesty in that behalf, in their commissions of captain-general and governour in chief of the said province, has been the difficulty of finding a sufficient number of subjects of his majesty in the said province properly qualified, in all respects, to be members of such assembly, according to the directions of the said commissions, which required, that all persons who should become members either of the said assembly of the freeholders of the said province, or of his majesty's council of the same, should take the oath of abjuration of the pope's power, and subscribe the declaration against transubstantiation, as well as take the oath of allegiance and the oath of abjuration of the pretender's right to the crown of these realms, before they were admitted to sit and vote in such assembly and council.[1] And this objection, we beg leave to represent,

That reason is now at an end, there being a sufficient number of protestant freeholders for that purpose.

is now thought, by persons well acquainted with the said province, to be at an end, there being now a sufficient number of freeholders in the said province to constitute a house of assembly, willing and ready to take the said oaths and declaration; in proof of which we beg leave to inform this honourable house, that a petition has been lately presented to his majesty from the British and protestant inhabitants of the said province, signed by a great number of persons of that description, requesting his majesty to summon and call such a general assembly of the freeholders of the said province, and assuring him that there are a sufficient number of persons in the said province qualified according to the direction of his majesty's commission for that purpose, and humbly representing to his majesty, that the situation and circumstances of the said province are at present such, as not only render the said measure of establishing a general assembly practicable, but likewise make it to be highly expedient for the regulation and improvement of the said province.[2]

And we beg leave further to represent, that if it be thought inexpedient on the one hand to constitute a house of assembly, consisting of protestants only, agreeably to the directions of his majesty's commissions before-mentioned, on account of the great superiority of the numbers of the Roman-Catholicks in the said province, who would thereby be excluded from sitting in such assembly; and, on the other hand, it be thought dangerous to summon a general assembly into which the Roman-Catholicks should be admitted indiscriminately with the protestants; and, on account of this twofold difficulty, it be judged necessary to have recourse to the new method of government above-mentioned, by investing a council of persons nominated, and removeable at, the pleasure of the crown, with a certain degree of

Objection to the admission of Roman-Catholicks into the legislative council.

legislative authority; we humbly hope that the same reasons which make it be judged dangerous to admit the Roman-Catholick inhabitants of the said province into a share of the legislative authority by means of an open assembly of the same, will be thought sufficient to exclude them from obtaining a share of the same authority by an admission into this new legislative council; which, being a single body invested with the power of making laws for the province, will be of more weight and consequence in the same, than an assembly of the freeholders would be, if the plan of government promised by his majesty's proclamation and commissions above-mentioned, by a

[1] See conditions stated in Murray's Commission, p.128.

[2] See Petition to the King from Quebec and Montreal, p. 347.

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governour, council and assembly, had been pursued. And therefore we cannot but express our concern to find, that in the bill now before parliament,[1] there is no provision that all, or even any of, the members of the said intended council should of necessity be protestants, but that they may be all Roman-Catholicks notwithstanding any thing contained in the same. And therefore we most humbly and earnestly intreat this honourable house to take care that, if such a legislative council must be established in the said province, in lieu of an assembly of the freeholders of the same, the members thereof shall be all protestants; or, if that be thought too much to grant to them, that at least a majority of the members of the said council should necessarily be protestants, and only a few of the most moderate sort of Roman-Catholicks should be admitted into it, who should be required to take the oath of abjuration of the pope's authority, though not to subscribe the declaration against transubstantiation; which is a temperament, which, as we conceive, might lead to good effects hereafter.

Necessity of making the members of the legislative council independent of the governour.

And we further beg leave to represent both on our own account, and in behalf of our friends and correspondents, the antient British inhabitants now residing in the said province, that, if the said province must be governed by a legislative council, nominated by his majesty, without the concurrence of an assembly of the freeholders of the same, we humbly hope that a clause will be inserted in the bill, to render the members of the said council incapable of being either removed or suspended by his majesty's governour of the said province, and liable only to be removed by his majesty himself, by his order in his privy council, (of whose wisdom and justice we can entertain no suspicion) to the end, that the said counsellors may both act with a spirit of freedom and independence becoming their high offices of legislators of the said province, and be thought to do so by the people of the same, instead of being considered as dependent creatures and tools of the will and pleasure of the governour for the time being, as we conceive will be the case, if he shall be invested with a power of removing or suspending them from their said offices at his discretion.

The petitioners desire that the legislative council may consist of a certain number of members, instead of a number that may be varied at pleasure.

And we beg leave further to represent, that it is also our wish, if such a legislative council shall be established in lieu of an assembly, that the number of the members thereof may be fixed and certain, instead of being liable to vary between the numbers of seventeen and twenty-three persons, as is proposed in the present bill; and likewise, that the said council may be made as numerous as conveniently may be, to the end, that it may contain within it persons acquainted with every part of the province, and the interests of the inhabitants residing in the same, and that their acts and resolutions may be, for the most part, agreeable to the sentiments of the body of the people over whom they are to preside. And, with respect to this point, we beg leave to represent, that it is the opinion of some of the most judicious and respectable of our friends and correspondents in the said province, that it would be easy to find thirty-one persons amongst the British and other protestant inhabitants of the said province, capable of being useful members of such a council.

And they suggest that their number should be thirty-one

They further desire that a majority of the whole number of counsellors may be made necessary to the transacting of business.

And we further beg leave to represent, that in case such a legislative council should be established, it is our earnest desire that provision may be made in the said bill, that a certain number of the members of the same shall be necessary to transact business; without which it may happen, that a very small part of the whole body, as, for example, five or six persons, shall occasionally exercise the great powers vested in the whole, and make laws and ordinances that shall bind all the inhabitants of the province; which, we humbly conceive, would be highly inexpedient and unbecoming, and cause great uneasiness in the said province. And we are

[1] The Quebec Bill.

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humbly of opinion, that the number thus made necessary to the exercise of these high legislative powers, ought to be more than half the whole number of the members of such council.

And that the members may be paid for their attendance at the council, a certain sum of money for every attendance.

And we further beg leave to suggest it as our opinion concerning this legislative council, that it would be expedient that the members thereof should receive some reasonable reward out of the publick revenue of the province, for every attendance at the meetings of the said council on the legislative business of the said province, sufficient, at least, to defray the expences of travelling to the place where the said meetings shall be held, and of residing there during the time of the said meetings; to the end, that at all the meetings of the said council, there may be a very full attendance of counsellors, who may concur in exercising the said high authority; without which, the ordinances they shall pass will not be very likely to obtain the reverence due to them from the people, nor meet with a chearful obedience.

And that the said council may be established for only a small number of years, to the end that the province may afterwards be governed by an assembly.

But above all, we beg leave to repeat our most earnest hopes and desires, that the establishment of the said legislative council (if it shall be resolved that such a one shall be established,) may be only for a small number of years, to the end, that, in case it shall hereafter appear to his majesty, that the situation and circumstances of the said province will admit of the summoning a general assembly of the freeholders of the same, we may at last reap the benefit of his most gracious promise to us in his proclamation and commissions above-mentioned, that we should be governed in the usual and approved method of his majesty's other colonies in America, by a governour, council, and assembly.

We therefore humbly hope, that the honourable house of commons will take our case into consideration, and permit us to be heard by our council at the bar of their house, to the several heads mentioned in this state of it, and to such other parts of the bill now before them, as we shall apprehend ourselves to be concerned in interest to object to, either on our own account, or in the behalf of our correspondents and friends, the Old British subjects of the crown now residing in the said province. And we have a firm reliance on the wisdom and justice of this honourable house, the representatives of the Commons of Great-Britain, for a satisfactory determination upon all the matters contained in this case, and upon the other points which may be submitted to their consideration by our counsel at their bar, and for the protection of our rights and liberties, as British subjects, who have acted under the sanction of his majesty's royal proclamation above-mentioned.

LORD MANSFIELD'S JUDGMENT IN CAMPBELL v. HALL, 1774.[1]

The case of the Island of Grenada; in relation to the payment of four and one-half in the hundred of goods imported therefrom; between Alexander Campbell, Esq., Plaintiff, and Wm. Hall, Esq., Defendant, in the Court of King's-Bench, before Lord Chief-Justice Mansfield: 15 George III., A.D. 1774.

November 28.

The unanimous judgment of the Court was this day given by Lord Mansfield, as follows:

This is an action brought by the plaintiff, Alexander Campbell, who is a natural-born subject of Great Britain, and who, upon the third of May, 1763, purchased lands

[1] After comparing the versions of this Judgment as given in Cowper's "Reports," Lofft's "Reports," and Howell's "Complete Collection of State Trials" Vol. XX, it has been found that, with some slight variations, the selected version given by Mr. Wm. Houston in his "Documents illustrative of the Canadian Constitution" p.79, may be safely followed, and is therefore substantially that given here.

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in the island of Grenada; and it is brought against the defendant, William Hall, who was collector for His Majesty at the time of levying the imposts, and of the action brought, of a duty of four and a half per cent. upon goods exported from the island of Grenada. The action is to recover a sum of money, which was levied by the defendant and paid by the plaintiff, as for this duty of four and a half per cent. upon sugars, which were exported from the island of Grenada, from the estate and by the consignment of the plaintiff.

The action is an action for money had and received; and it is brought upon this ground, namely, that the money was paid to the defendant without consideration, the duty for which he received it not having been imposed by lawful or sufficient authority to warrant the same.

And it is stated in the special verdict[1] that the money is not paid over, but continues in the defendant's hands, by consent of the Attorney-General, for His Majesty, in order that the question may be tried.

The special verdict states Grenada to have been conquered by the British arms from the French King in 1762; that the island was ceded by capitulation; and that the capitulation upon which it surrendered was by reference to the capitulation upon which the island of Martinico had been surrendered on the 7th of February, 1762.

The special verdict then states some articles of that capitulation, particularly the fifth, which grants that Grenada should continue to be governed by its own laws till His Majesty's pleasure be known. It next states the sixth article, where, to a demand of the inhabitants of Grenada requiring that they, as also the religious orders of both sexes, should be maintained in the property of their effects, moveable and immoveable, of what nature soever, and that they should be preserved in their privileges, rights, honours, and exemptions, the answer is that the inhabitants, being subjects of Great Britain, will enjoy their properties and the same privileges as in the other His Majesty's Leeward Islands.

Then it states another article of the capitulation, namely, the 7th article, by which they demand that they shall pay no other duties than what they before paid to the French King; that the capitation tax shall be the same, and that the expenses of the courts of justice, and of the administration of government should be paid out of the King's demesne: in answer to which they are referred to the answer I have stated, as given in the foregoing article; that is, being subjects they will be entitled in like manner as the other His Majesty's subjects in the British Leeward Islands.

The next thing stated in the special verdict in the treaty of peace signed on the 10th of February, 1763; and it states the part of the treaty of peace by which the island of Grenada is ceded, and other articles which are not material.[2]

The next material instrument which they state is a proclamation under the Great Seal, bearing date the 7th of October, 1763, reciting thus:

"Whereas it will greatly contribute to the settling of our said islands of which "Grenada is one, that they be informed of our love and paternal care for the liberties "and rights of those who are, or shall be inhabitants thereof; we have thought fit to "publish and declare by this our proclamation, that we have by our letters patent under "our Great Seal of Great Britain, whereby our said Governments are constituted, given "express power and direction to our governors of our said colonies respectively, that so "soon as the state and circumstances of the said colonies will admit thereof, they shall, "with the advice and consent of our said council, call and summon general assemblies, "in such manner and form as is used in the other colonies under our immediate govern- "ment. And we have also given power to the said governors, with the advice and consent "of our said council and assembly of representatives as aforesaid, to make, constitute,

The general argument presented in this judgment on the status of the laws of a conquered country, and on the nature of the authority having the right to change them, may be compared with the arguments presented, in the case of the Province of Quebec, by the various law Officers of the Crown, alike in Britain and in Canada. In Vol. II, of the "Canadian Freeholder" Maseres discusses the whole judgment with his usual learning.

[1] Referring to the verdict of the jury before whom the case had been tried and who rendered a special verdict setting forth the facts in the case.

[2] See Treaty of Paris, 1763, article 9; p.76, and also p.87.

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"and ordain laws, statutes, and ordinances for the public peace, welfare and good govern-"ment of our said colonies and the inhabitants thereof, as near as may be agreeable to "the laws of England, and under such regulations and restrictions as are used in our "other colonies."[1]

Then follow letters patent under the Great Seal, or rather a proclamation of the 26th of March, 1764, whereby the King recites, that he had ordered a survey and division of the ceded islands, as an invitation to all purchasers to come and purchase upon certain terms and conditions specified in that proclamation.

The next instrument stated in the verdict is the letters patent bearing date the 9th of April, 1764. In these letters there is a commission appointing General Melville Governor of the island of Grenada, with power to summon an assembly as soon as the situation and circumstances of the island would admit; and to make laws in all the usual forms with reference to the manner of the other assemblies of the King's Provinces in America.[2]

The Governor arrived in Grenada on the 14th of December, 1764; before the end of 1765, the particular day not stated, an assembly actually met; but before the arrival of the Governor at Grenada, indeed, before his Commission, and before his departure from London, there is another instrument upon the validity of which the whole question turns, which instrument contains letters patent under the Great Seal, bearing date the 20th of July, 1764, and reciting that in Barbadoes, and in all the British Leeward islands, a duty of four and a half per cent. was paid upon goods exported; and reciting further:

"Whereas it is reasonable and expedient, and of importance to our other sugar "islands, that the like duties should take place in our said island of Grenada; we have "thought fit, and our royal will and pleasure is, and we do hereby, by virtue of our "prerogative Royal, order, direct, and appoint that an impost or customs of four and "a half per cent. in specie, shall, from and after the 29th day of September next ensuing "the date of these presents be raised and paid to us, our heirs and successors, for and "upon all dead commodities of the growth or produce of our said island of Grenada that "shall be shipped off from the same, in lieu of all customs and impost duties hitherto "collected upon goods imported and exported into and out of the said island, under the "authority of his Most Christian Majesty, and that the same shall be collected, &c."; then it goes on with reference to the island of Barbadoes, and the other Leeward islands.

The jury find that in fact such duty of four and a half per cent. is paid to his Majesty in all the British Leeward islands. And they find several Acts of Assembly which are relative to the several islands, and which I shall not state, as they are public, and every gentleman may have access to them.

These letters patent of the 20th of July, 1764, with what I stated in the opening, are all that is material in this special verdict.

Upon the whole of the case this general question arises, being the substance of what is submitted to the Court by the verdict: "Whether these letters patent of the 20th of July, 1764, are good and valid to abrogate the French duties, and in lieu thereof to impose this duty of four and a half per cent., which is paid by all the Leeward islands subject to his Majesty."

That the letters are void has been contended at the bar, upon two points: (1) That although they had been made before the Proclamation of the 7th of October, 1763, the King by his prerogative could not have imposed them; and (2) that, although the King had sufficient authority before the 7th of October, 1763, he had divested himself of that authority by the Proclamation of that date.

A great deal has been said, and authorities have been cited relative to propositions in which both sides exactly agree, or which are too clear to be denied. The stating of these will lead us to the solution of the first point.

I will state the propositions at large:

[1] See Proclamation of 1763, p.119. This is only a paraphrase and not a verbally correct transcript of the section quoted; see p.120, last paragraph.

[2] That this Commission was practically the same as that for the Governor of Quebec is evident from the proceedings in connection with their draughting. See pp. 109 & 116.

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1. A country conquered by the British arms becomes a dominion of the King in the right of his crown, and therefore necessarily subject to the legislative power of the Parliament of Great Britain.

2. The conquered inhabitants once received into the conqueror's protection become subjects; and are universally to be considered in that light, not as enemies or aliens.

3. Articles of capitulation, upon which the country is surrendered, and treaties of peace by which it is ceded, are sacred and inviolate, according to their true intent and meaning.

4. The law and legislation of every dominion equally affects all persons and property within the limits thereof, and is the true rule for the decision of all questions which arise there. Whoever purchases, sues, or lives there, puts himself under the laws of the place, and in the situation of its inhabitants. An Englishman in Ireland, Minorca, the Isle of Man, or the Plantations, has no privilege distinct from the natives while he continues there.

5. The laws of a conquered country continue in force until they are altered by the conqueror. The justice and antiquity of this maxim are incontrovertible; and the absurd exception as to pagans mentioned in Calvin's case, shows the universality and antiquity of the maxim. That exception could not exist before the Christian era, and in all probability arose from the mad enthusiasm of the Crusades. In the present case the capitulation expressly provides and agrees that they shall continue to be governed by their own laws, until his Majesty's pleasure be further known.

6. If the King has power (and, when I say " the King," I mean in this case " the King without the concurrence of Parliament") to alter the old and to make new laws for a conquered country—this being a power subordinate to his own authority as a part of the supreme legislature and parliament—he can make none which are contrary to fundamental principles he cannot exempt an inhabitant from the laws of trade, or the authority of Parliament, or give his privileges exclusive of his other subjects; and so in many other instances that might be put.

The present Proclamation is an Act of this subordinate legislative power. If it had been made before the 7th of October, 1763, it would have been made on the most reasonable and equitable grounds, putting the island of Grenada as to duties on the same footing as the other islands.

If Grenada paid more duties, the injury would have been to her; if less, it must have been detrimental to the other islands; nay, it would have been carrying the capitulation into execution, which gave the people of Grenada hopes that if any new duties were laid on, their condition would be the same as that of the other Leeward islands.

The only question which remains on this first point then is, whether the King of himself had power to make such a change between the 10th of February, 1763, the day the treaty was signed, and the 7th of October, 1763.

Taking the above propositions to be granted, he has a legislative power over a conquered country, limited to him by the constitution, and subordinate to the constitution and parliament. It is left by the constitution to the King's authority to grant or refuse a capitulation. If he refuses, and puts the inhabitants to the sword, or exterminates them, all the lands belong to him; and if he plants a colony, the new settlers share the land between them, subject to the prerogative of the conqueror. If he receives the inhabitants under his protection and grants them their property, he has power to fix such terms and conditions as he thinks proper. He is entrusted with making peace at his discretion; and he may retain the conquest, or yield it up, on such condition as he pleases. These powers no man ever disputed, neither has it hitherto been controverted that the King might change part or the whole of the law or political form of government of a conquered nation.[1]

To go into the history of conquests made by the crown of England.

The alteration of the laws of Ireland has been much discussed by lawyers and writers of great fame at different periods of time; but no man ever said the change was made by the parliament of England; no man, unless perhaps Mr. Molyneux, ever said the

[1] See however the discussion of this point by Atty. Gen. Thurlow, p.292.

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King could not do it. The fact, in truth, after all the researches that have been made, comes out clearly to be as laid down by Lord Chief Justice Vaughan, that Ireland received the laws of England by the charters and commands of Henry II., King John, Henry III., and he adds an *et cetera* to take in Edward I., and the successors of the princes named. That the charter of 12 King John was by assent of a parliament of Ireland, he shows clearly to be a mistake. Whenever the first parliament was called in Ireland, that change in their constitution was without an act of the parliament of England, and therefore must have been derived from the King.

Mr. Barrington is well warranted in saying that the 12th of Edward I., called the "Statute of Wales," is certainly no more than a regulation made by the King as conqueror, for the government of the country, which, the preamble says, was then totally subdued; and, however for purposes of policy he might think fit to claim it as a fief appertaining to the realm of England, he could never think himself entitled to make laws without assent of parliament to bind the subjects of any part of the realm. Therefore as he did make laws for Wales without assent of parliament, the clear consequence is that he governed it as a conquest: which was his title in fact, and the feudal right was but a fiction.

Berwick, after the conquest of it, was governed by charters from the crown, till the reign of James I., without interposition of parliament.

Whatever changes were made in the laws of Gascony, Guyenne, and Calais must have been under the King's authority; if by act of parliament, that act would be extant, for they were conquered in the reign of King Edward III.; and all the acts from that reign to the present time are extant; and in some acts of parliament there are commercial regulations relative to each of the conquests which I have named; none making any change in their constitution and laws, and particularly with regard to Calais, which is alluded to as if its laws were considered as given by the Crown. Yet as to Calais, there was a great change made in the constitution: for the inhabitants were summoned by writ to send burgesses to the English parliament; and, as this was not by act of parliament, it must have been by the sole act of the King.

Besides the garrison there are inhabitants, property, and trade at Gibraltar; the King, ever since that conquest, has from time to time made orders and regulations suitable to the condition of those who live, trade, or enjoy property in a garrison town.

Mr. Attorney-General[1] has alluded to a variety of instances, several within these twenty years, in which the King has exercised legislation over Minorca. In Minorca, it has appeared lately, there are and have been for years back a great many inhabitants of worth and a great trade carried on. If the King does it there as coming in the place of the King of Spain, because their old constitution continues (which by the by is another proof that the constitution of England does not necessarily follow a conquest by the King of England) the same argument applies here; for before the 7th of October, 1763, the constitution of Grenada continued, and the King stood in the place of their former sovereign.

After the conquest of New York, in which most of the old Dutch inhabitants remained, King Charles II. changed its constitution and political form of government, and granted it to the Duke of York, to hold from his crown under all the regulations contained in the letters patent.

It is not to be wondered that an adjudged case in point is not to be found; no dispute ever was started before upon the King's legislative right over a conquest; it never was denied in a court of law or equity in Westminster-hall, never was questioned in parliament. Lord Coke's report of the arguments and resolutions of the judges in Calvin's case lays it down as clear (and that strange extrajudicial opinion, as to a conquest from a pagan country, will not make reason not to be reason, and law not to be law as to the rest). The book says, that "if a King"—I omit the distinction between a Christian and an infidel kingdom, which as to this purpose is wholly groundless, and most deservedly exploded—"If a King comes to a kingdom by conquest, he may, at his pleasure, alter and change the laws of that kingdom; but, until he doth make an alteration of those laws the ancient laws of that kingdom remain; but if a King hath a

[1] Edward Thurlow. See note 1, p. 305.

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kingdom by title of descent, then, seeing that by the laws of that kingdom he doth inherit the kingdom, he cannot change those laws of himself without consent of parliament." It is plain that he speaks of his own country where there is a parliament. Also, "if a King hath a kingdom by conquest, as King Henry the Second had Ireland, after King John had given to them, being under his obedience and subjection, the laws of England for the government of that country, no succeeding King could alter the same without parliament." Which is very just, and it necessarily includes that King John himself could not alter the grant of the laws of England.

Besides this, the authority of two great names has been cited, who took the proposition for granted. And though opinions of counsel, whether acting officially in a public charge or in private, are not properly authority on which to found a decision, yet I cite them;—not to establish so clear a point, but to shew that when it has been matter of legal enquiry, the answer it has received, by gentlemen of eminent character and abilities in the profession, has been immediate and without hesitation, and conformable to these principles. In 1722, the assembly of Jamaica refusing the usual supplies, it was referred to Sir Philip Yorke, and Sir Clement Wearg, what was to be done if they should persist in this refusal. Their answer is—"If Jamaica was still to be considered as a conquered island, the King had a right to levy taxes upon the inhabitants; but, if it was to be considered in the same light as the other colonies, no tax could be imposed upon the inhabitants, but by an assembly of the island, or by an act of parliament." The distinction in law between a conquered country and a colony they held to be clear and indisputable; whether, as to the case before them of Jamaica, that island remained a conquest or was made a colony, they had not examined. I have, upon former occasions, traced the constitution of Jamaica as far as there are books or papers in the offices; I cannot find that any Spaniard remained upon the island so late as the Restoration; if any, they were very few. A gentleman to whom I put the question on one of the arguments in this cause, said he knew of no Spanish names among the white inhabitants of Jamaica; but there were amongst the negroes. The King, I mean Charles the Second, after the Restoration invited settlers by proclamation, promising them his protection. He made grants of land. He appointed at first a governor and council only; afterwards he granted a commission to the governor to call an assembly. The constitution of every province immediately under the King has arisen in the same manner; not by the grants, but by commissions, to call assemblies. And therefore, all the Spaniards having left the island, or having been killed or driven out of it, Jamaica from the first settling was an English colony, who under the authority of the King planted a vacant island, belonging to him in right of his crown; like the cases of the islands of St. Helena and St. John, mentioned by Mr. Attorney-General.

A maxim of constitutional law, as declared by all the judges in Calvin's case, and which two such men in modern times as Sir Philip Yorke and Sir Clement Wearg took for granted, will acquire some authority, even if there were anything which otherwise made it doubtful; but on the contrary no book, no saying of a judge, no, not even an opinion of any counsel, public or private, has been cited; no instance is to be found in any period of our history where it was ever questioned.

The counsel for the plaintiff undoubtedly labored this point from a diffidence of what might be our opinion on the second question. But upon the second point, after full consideration, we are of opinion that before the letters patent of the 20th of July, 1764, the King had precluded himself from an exercise of the legislative authority which he had before by virtue of his prerogative over the island of Grenada.

The first and material instrument is the proclamation of the 7th of October, 1763. See what it is that the King there says, and with what view he says it; how and to what he engages himself and pledges his word: "Whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are, and shall become, inhabitants thereof; we have thought fit to publish and declare by this our proclamation, that we have in the letters patent under our Great Seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies respectively, that, so soon as the state and circum-

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stances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies" (and then follow the directions for that purpose.) And to what end? "To make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies," of which this of Grenada is one, "and of the people and inhabitants thereof, as near as may be agreeable to the laws of England." With what view is the promise given? To invite settlers; to invite subjects. Why? The reason is given. They may think their liberties and properties more secure when they have a legislative assembly than under a governor and council only. The governor and council depending on the King, he can recall them at pleasure, and give a new frame to the constitution; but not so of the other, which has a negative on those parts of the legislature which depend on the King. Therefore that assurance is given them for the security of their liberty and properties, and with a view to invite them to go and settle there after this proclamation that assured them of the constitution under which they were to live.[1]

The next act is of the 26th of March, 1764, which, the constitution having been established by proclamation, invites further such as shall be disposed to come and purchase, to live under the constitution. It states certain terms and conditions on which the allotments were to be taken, established with a view to permanent colonization and the increase and cultivation of the new settlement. For further confirmation of all this, on the 9th of April, 1764, three months before the impost in question was imposed, there is an actual commission to Governor Melville, to call an assembly as soon as the state and circumstances of the island should admit.[2]—You will observe in the proclamation there is no legislature reserved to be exercised by the King, or by the governor and council under his authority, or in any other method or manner, until the assembly should be called: the promise imports the contrary; for whatever construction is to be put upon it, (which perhaps it may be somewhat difficult to pursue through all the cases to which it may be applied) it apparently considers laws then in being in the island, and to be administered by courts of justice; not an interposition of legislative authority between the time of the promise and of calling the assembly. It does not appear from the special verdict when the first assembly was called; it must have been in about a year at farthest from the governor's arrival, for the jury find he arrived in December, 1764, and that an assembly was held about the latter end of the year 1765. So that there appears to have been nothing in the state and circumstances of the island to prevent calling an assembly.

We therefore think that, by the two proclamations and the commission to Governor Melville, the King had immediately and irrevocably granted to all who were or should become inhabitants, or who had or should have property, in the island of Grenada—in general to all whom it might concern—that the subordinate legislation over the island should be exercised by an assembly, with the consent of the governor and council, in like manner as in the other provinces under the King.

Therefore, though the right of the King to have levied taxes on a conquered country, subject to him in right of his crown, was good, and the duty reasonable, equitable, and expedient, and, according to the finding of the verdict, paid in Barbadoes and all the other Leeward islands; yet by the inadvertency of the King's servants in the order in which the several instruments passed the office (for the patent of the 20th of July, 1764, for raising the impost stated, should have been first), the order is inverted, and the last we think contrary to and a violation of the first, and therefore void. How proper soever the thing may be respecting the object of these letters patent of the 26th of July, 1764, it can only now be done, to use the words of Sir Philip Yorke and Sir Clement Wearg, "by the assembly of the island, or by an act of the Parliament of Great Britain."

The consequence is, judgment must be given for the plaintiff.

[1] Since Canada came equally with Grenada under the Proclamation of Oct. 1763, the chief features of this paragraph apply closely to the Canadian case and represent the claims so constantly put forth by the English element in their petitions.

[2] See preparations for the issue of Commissions for Governors Melville and Murray, among others; pp. 109 & 116.

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MASERES TO THE LORD CHANCELLOR.[1]

April 30th 1774.

MY LORD, Inner Temple

I took the liberty of communicating to your Lordship some time ago the testimonies of Mr Le Brun,[2] the French lawyer at Quebeck, and Mr Du Mas Saint Martin,[3] the justice of peace at Montreal, concerning the favourable reception my French memoire[4] had met with in Canada from the Canadians as well as the English. I now beg leave to add the testimony of Mr De Lisle, the protestant minister and Chaplain of the garrison at Montreal, a native of old France, and Colonel Christie, a Scotsman of an excellent understanding and easy fortune, and who has known Canada ever since the conquest of it, and who is proprietor of two valuable seigniories in it; both to the same purpose. Mr De Lisle writes as follows—"Your answer to Mr Cugnet is universally admired and applauded by both English and Canadians."

And Colonel Christie writes in these words. "I can assure you that your mémoire à la défense du plan d'acte &c. has given the greatest satisfaction to all your friends; and the priests themselves, and every sensible Canadian, allow you the merit you are justly intitled to for that performance." This expression of *the priests themselves and every sensible Canadian* I cannot but look upon as a strong testimony in favour of the plan for settling the laws recommended and defended in that memoire—and therefore I conclude that the Canadians themselves do not look upon it as a wild or visionary scheme, oppressive to them, but as reasonable and practicable and beneficial to the province, and that they are contented with the degree of French law thereby continued amongst them, which consists of all their law concerning the tenures of land, or the mutual rights and obligations of Seignior and tenant, and all their laws of conveyancing; and with respect to marriages already contracted, and the offspring of them, their laws of dower and inheritance; and with respect to future marriages the English law of dower and tenancy by the courtesy and other English laws relating to the civil effects of marriage, unless they shall provide otherwise by their marriage agreements, which they are impowered to do, and which it will be extremely easy for them to do, it being their general custom to make marriage agreements in writing, even where they have no property to settle; and with respect to inheritance by children born of those future

[1] Canadian Archives, Dartmouth Papers; M 385, p. 272.

[2] Referring to an extract from a letter of Mr. Le Brun, a lawyer of Quebec, dated Jan. 8th, 1774, "Containing the sentiments of himself and divers other Canadians concerning my draught of an act of parliament for settling the laws of the Province of Quebec." M 384, p. 240.

[3] Mr. Saint Martin was "a French protestant residing at Montreal (who was formerly a subject of the French King,)" A summary of his letter of Jan. 7th, 1774 is given in M 384, p. 243.

[4] Referring to his "Mémoirs à la Défense d'un plan d'Acte de Parlement pour l'Etablissement de Loix de la Province de Quebec, Dressé par Mr. François Maséres, &c. &c. contre Les Objections de Mr. François Joseph Cugnet, &c. &c. A Londres, 1773." This, in turn, refers to Maseres' "Draught of an Act of Parliament for Settling the Laws of the Province of Quebec," of which he made two draughts. The first was issued in Aug. 1772; and of this he sent a copy to Lord Dartmouth, and also submitted it to the consideration of a number of others, English and French. Among the latter was M. De Lotbiniere who criticised it quite freely. His criticism Maseres also sent to Lord Dartmouth, Jan. 7, 1773, with the following remarks—"These remarks I (with the privity and approbation of Mr. Thurlow, the Attorney-General,) desired Mr. de Lotbiniere to reduce to writing, though I knew they would principally be censures upon the things I had proposed. But I wished that both sides of the question might be known to his Majesty's Ministers, that they might be the better able to resolve ultimately upon what was just and reasonable." M 384, p. 36. On March 29th, 1773 he sent a new draught of the act to Lord Dartmouth with the accompanying letter:—"Mr. Maseres presents his respects to Lord Dartmouth, and desires his Lordship's acceptance of the copy herewith sent of a new draught of an act of Parliament for settling the laws of the province of Quebec, which he has prepared in consequence of some remarks made on the former draught by a Canadian gentleman of abilities, who has complained that some things in the former draught are asserted and proposed without sufficient grounds and reasons. To obviate this objection, the grounds and reasons of the principal things contained in this new draught are set forth at great length. The provisions themselves are much the same as in the former draughts, which had the honour of being approved by Sir Eardly Wilmot." March 29, 1773. M 384, p. 59. Sir John Eardley Wilmot, after filling several important legal offices, had just resigned from the position of Chief Justice of the Court of Common Pleas. The chief points dealt with by Maseres in his Draught of an Act" &c. are given in this letter to the Lord Chancellor.

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marriages, not the English law of inheritance, but a certain intermediate law of inheritance, less different than the English from their own former law of inheritance, and particularly suited to that province and fitted to preserve in its original state that wise distribution of the lands in Canada which most people have thought worthy of Admiration, and to prevent the great inconveniences arising from the indefinite subdivision of small portions of land, which has long been a subject of complaint amongst them, and which the King of France endeavoured to remedy by another method so long ago as the year 1745.[1] And this new law of inheritance is also left subject to be contrould by the Canadians by their last wills or marriage-settlements, or other deeds in their life time. The rest of the plan establishes the English laws of the Admiralty, in order to preserve an uniformity on that subject between the Port of Quebeck and the other ports in America, and the English criminal law, which has been followed now for ten years with the general approbation of the Canadians, and the English law of Habeas Corpus in its most beneficial extent, which, I presume, cannot be disagreeable to any people. I hope your Lordship will excuse the trouble I have presumed to give you in stating these reasons in defence of a plan which I had bestowed much time and pains in preparing, and which appears to have been well received and approved by the Canadians themselves, who were the persons most likely to complain of it.

I remain your Lordship's most obedient and humble Servant

FRANCIS MASERES.

Addressed :—To
The Right Honb[le] Lord Apslie,
Lord High Chancellor of Great Britain.

MEMORANDA AND DRAUGHTS OF BILLS RELATING TO THE SUBJECT OF THE QUEBEC ACT.[2]

MEMORANDUM ON GOVERNMENT OF QUEBEC.[3]

A MEMORANDUM of things necessary for establishing Laws & Government in the Province of Quebec, either by Act of Parliament, Order of the King in Council or by the proposed Council at Quebec.

First, To get rid of the Proclamation of 1763 with the Commissions & Ordinances depending thereon and to restore the old Law and Constitution.

2[dly] To accomodate the Duties & Taxes paid at the time of the Conquest to the change of Dominion.

[1] See note, p. 241.

[2] The following memoranda, suggestions, and draughts of bills relating to the Quebec Act have been found among the Papers of Lord Dartmouth, under whom, as Colonial Secretary, the Quebec Bill took shape, and by whom it was finally introduced in the House of Lords on May 2nd, 1774. Most of these are without date, address, or signature, to indicate when, for whom, or by whom they were prepared, nor are they arranged in chronological order. However, by internal evidence, by comparisons between them, and with other documents, and with the aid of a few notes which passed between the parties chiefly concerned in framing the measure, it has been possible to identify most of them and trace the normal order of their development.

[3] Canadian Archives, M. 385, p. 326. This memorandum would appear to have been the outcome of one or more of the conferences of an inner circle of the Ministry, with special advisers such as Carleton, in dealing with American policy. The features suggested are not in accordance with any one of the Reports on the subject which had been made to the Government. Notwithstanding the numerous declarations, during the previous seven years, that the system of law and government in Quebec was on the point of being settled, the members of the Government chiefly responsible for the policy of the Quebec Act had not apparently given the matter very full consideration before the latter part of 1773, as may be gathered from the following statements. On Aug. 4th 1773, the Lord Chancellor sent the following note to Dartmouth, "The Chancellor's Complime[ts] to L[d] Dartmouth, takes the liberty to send him some Papers relative to Canada, which together with the Reports of the Kings Advocate, the Attorney Gen[l] & the Sollicitor Gen[l] will, he believes, enable his Lordship to form a plan of Government for that Province, fit to be laid before Parliament; & the Chancellor is happy in having received assurance from his Lordship that He means to undertake it." M 384, p. 178.

3dly To constitute a Governor and Council at Quebec with Power to make Laws and Ordinances under such restrictions as shall be thought necessary.

4thly To erect proper Courts of Judicature.

The nearer such Courts are to the Old ones in Form, the more agreable they will be to the Inhabitants and more likely to have their Effect.

5. To make an Alteration in the mode of trying Capital Offences by allowing the Party the Benefit of being tried by Juries according to the Law of England so as no Judgement shall, after the Verdict given, be arrested upon any Objection of Informality.

6thly To abolish the use of the Torture & the Punishment of breaking upon the Wheel.

7thly To allow the Inhabitants the Privilege of the Common Law Writ of Habeas Corpus.

8thly To provide that all Incumbents be nominated by the Governor in Writing under his Hand and Seal, unless the Right of Patronage be in any private Person And that all Incumbents be irremoveable except for Misdemeanor to be tried by the Governor and Council.

9th To give all Ecclesiastical Jurisdiction in regard to Marriages, the Probate of Wills, granting Letters of Administration and other Civil Rights, except only in the Case of Tythes to the Courts of Law, and all Questions concerning Tythes to be determined by the Governor & Council.

10th Every Protestant Parishioner to pay his Tythes to the King's Officer towards providing a Maintenance for the Protestant Clergy.

On Aug 26th, Maseres writing to Dartmouth, says : "Mr. Maseres begs leave to acquaint his Lordship that on Tuesday se'ennight (which he apprehends to be since his Lordship left town,) he had the honour of waiting on Lord North by appointment at Bushey Park, to confer with him on the affairs of Quebec ; and that Lord North seemed fully determined to do something towards the settlement of that Province in the next session of parliament, and particularly with respect to the establishment of a revenue and a legislature. His Lordship was clearly of opinion that this ought to be by a legislative council, and not an assembly ; and he liked very well the proposal (contained in Mr. Maseres's draught of an act of parliament for establishing such a council,) that they should not be invested with the power of taxation, but only that of legislation, and that the necessary taxes should be laid by the Parliament of Great Britain.

"Lord Mansfield has also very lately declared an intention of reading over all the papers relating to the province of Quebec, and using his endeavours towards procuring a Settlement of it. And, about two months ago, Lord Chancellor made a similar declaration. And the leisure of this season of retirement seems to be favourable to this good design of their Lordships to give this subject a thorough consideration. If therefore, Lord Dartmouth should bring on the determination of this business in the privy council in the course of this vacation, it seems likely that he would meet with a great concurrence and support from his Majesty's other servants and counsellors, and that the whole settlement of that province might be prepared and digested in the manner necessary for the consideration of parliament by the beginning of next Session." M 384, p. 194.

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FIRST DRAUGHT OF QUEBEC BILL.[1]

An Act for granting for a limited time, therein ment[d] Powers of Legislation to the Governor & Council of His Majesty's Province of Quebec for the time being—

Whereas His Majesty was graciously pleased, by a Royal Proclamation bearing Date at St. James's the 7[th] Day of Oct[r] in the third year of His Majesty's Reign, to publish & declare, that certain Lands & Countries in America, therein mentioned & described, had been erected into a Province by the name of the Province of Quebec, & that the Gov[r] thereof was expressly empowered & directed, by Commission under the Great Seal, that so soon as the State & Circumstances of the said Province would admit thereof, he should, with the Advice & Consent of His Majesty's Council for the said Province, summon & call a General Assembly within the said Province in such manner & form as is used & directed in those Colonies & Provinces in America, which are under His Majesty's immediate Government, & that power had been also given to the said Governor with the consent of the Council & of the Representatives of the People so to be summoned & elected as aforesaid, to make constitute & ordain Laws, Statutes & Ordinances, for the public peace Welfare & good Government of the said Province & of the People & Inhabitants thereof. And Whereas the State & Condition of the said Province of Quebec has not hitherto been, is not now, nor is likely for some time to be such as to admit of a Lower House of Assembly or House of Representatives being convened, conformable to His Majesty's gracious Intentions declared in His Commission under the Great Seal & promulgated in the said Proclamation, by means whereof His Majesty's Subjects in the said Province are & must be exposed to great Inconveniences, the Welfare & Improvement of it obstructed, & a heavy burthen brought upon this Kingdom. In order therefore that these Wants & Defects may be remedied, & the Good Order and Welfare of the said Province provided for. Be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual & Temporal and Commons in this present Parliament assembled & by the Authority of the same that from & after the Day of it shall and may be lawful for the Governor or Commander in Chief of the said Province of Quebec, for the time being, by and with the *Advice and* Consent of the Council of the said Province for the time being, or the Majority thereof to make constitute & ordain Laws, Statutes and Ordinances, for the public peace, Welfare & good Governm[t] of the said Province, and of the people & Inhabitants thereof, in all cases whatsoever. Provided always & be it enacted that the said Council shall consist of not more than 21 nor less than 12 members, & that all Laws Statutes & Ordinances to be made under the Authority hereof, shall be so made & passed in ye s[d] Council when not less than 13 of the said Members shall be present. Provided nevertheless, and it is hereby enacted & ordained, by the Authority aforesaid, that no Law, Statute or Ordinance so to be framed & enacted as aforesaid by the said Governor or Commander in Chief & Council as aforesaid, by which the Life Limb or property of the Subject may be affected or any Duties or Taxes shall be imposed for the public use of the said Province, shall be of any force, validity or effect until approved by His Majesty, & such approbation signified by Order of His Majesty in Council. And be it further enacted by the Authority aforesaid, that Copies of all Laws, Statutes & Ordinances so to be framed & enacted by the said Governor Commander in Chief and Council as aforesaid shall, within three Months from the passing thereof (or sooner if opportunity offer) be transmitted duly authenticated under the Seal of the said Province by the said Governor or Command[r] in Chief for the time being to the Commissioners for Trade & Plantations, together with Accounts duly

[1] Canadian Archives, Dartmouth Papers, M 383, p. 51. This draught is evidently the work of Sol. Gen. Wedderburn whose ideas, chiefly, it expresses, as may be gathered from comparing it with his Report and especially with the "Abstract of such of the Regulations proposed in Mr. Solicitor Gen[ls] Report as it may be expedient to establish by Act of Parliament." See p. 302. This draught however was completely changed, both in form and content, under the direction of Lord Dartmouth, who in turn was influenced by different forces, personal and political.

attested of all public Monies levied & expended in virtue of any Law, Statute or Ordinance as aforesaid, in which said Account shall be specified the particular Service to which the said Monies have been issued & applied. And be it further enacted by the Authority aforesaid, that the said Laws, Statutes & Ordinances as also the Accounts abovementioned of all public Monies levied and expended within the said Province of Quebec, shall be laid by the said Commissioners for Trade and Plantations before both Houses of Parliament, as soon as may be after the same shall have been received by them from the said Province as aforesaid. And be it further enacted by the Authority aforesaid that this Act shall continue & be in force for the space of fourteen Years, and from thence to the End of the next Session of Parliament unless His Majesty, His Heirs & Successors shall think fit before the expiration of that Term to direct a Lower House of Assembly or House of Representatives to be convened within the said Province of Quebec in which case the Legislative powers hereby conferred upon the Governor or Commander in Chief & Council, for the time being, shall cease & determine & be of none effect, any thing herein contained to the contrary thereof notwithstanding.

Endorsed :—Dra^t of Bill—
Quebec

SECOND DRAUGHT OF THE QUEBEC BILL.[1]

An Act to remove the Doubts which have arisen relative to the Laws and Government of the Province of Quebec since His Majesty's Royal Proclamation of the Seventh day of October 1763.

Whereas by the Conquest of Canada and the Cession thereof by the Definitive Treaty of Peace concluded at Paris on the Tenth day of February 1763, His Majesty became Intitled to the Sovereignty thereof, *as a Dominion belonging to the Crown of*

[1] Canadian Archives, Dartmouth Papers, M 385, p. 300. This is the first draught of the Quebec Bill in which the wording of the Quebec Act as it finally passed begins to appear. That it was drawn by Wedderburn under instructions from Dartmouth, will appear from the following letter from Wedderburn to Dartmouth, dated March 2nd, 1774. "My Dear Lord I have attempted to express the alterations you were pleased to tell me were desired to be made in the Bill for Quebeck, But I am very doubtful whether I have succeeded in the Attempt. For I must confess my objections to the alterations and to some parts of the Bill, are much strengthened by the Consideration I have lately given to the subject

"It seems very strange to have a Criminal Code in which for Treason the Law of England is followed ; for other capital offences the Law of France (which avoids all definition) is to define the Crime, and the Law of England to prescribe the punishment and the mode of Trial ; In offences not capital, the Crime, its Trial and punishment are all referred to the Law of France which lets in all their arbitrary punishments of cutting out Tongues, slitting noses &^{ce} I have had much conversation with Mr. Hey who says that the Idea of reviving any part of the French Criminal Law besides the difficulty of uniting It to the Law of England would be as little agreable to the Canadians as it would to the English Inhabitants. That the former are in general very sensible of the advantages they derive from our Criminal Justice and make very good jurymen. He thinks there would be no objection to adopting the whole criminal Law of England because none has hitherto been discovered, but It would be still better to subject It to the revision of the Council to be established who might by degrees reject all the parts that are unfit for the constitution of Canada. I have with His assistance prepared a clause upon this Idea which is submitted to your Lordship." M 384, p. 251. (The remaining paragraphs of the letter are given as notes on the clauses of the draught to which they refer.) This first portion of the letter deals with the clauses of the second draught relating to the criminal law. The reference to "Clause A" in the margin of the criminal law clause of the draught, evidently designates the clause here referred to as prepared by Wedderburn and Hey, and which was substituted in the third draught for the clause to which Wedderburn objects. The retention of the French criminal law with perhaps such slight modifications as indicated in the second draught, was evidently the desire of Carleton, because the desire of the French Canadian Noblesse. The following year, on his return to Canada, he much regretted that he had ever favoured the concession to Canada of the Habeas Corpus and the English criminal law. (See Carleton to Dartmouth, June 7th, 1775, given below.) That it was the desire of representative members of the French Canadian Noblesse to have the French criminal, as well as civil law restored in full, is evident from the review of the Quebec Bill submitted by M. Lotbiniere. See p. 395.

If we compare this draught of the Quebec Bill with the various Reports of the Board of Trade, the Atty. Gen. of Quebec and the Sol., Atty., and Advt. Gen. of England, we find that, as declared by Knox, the Under Secretary of State for the Colonies, and a stout advocate of the Ministerial policy towards America, "thus it fell out, that, after all the pains which had been taken to procure the best and ablest advice, the Ministers were in a great measure left to act upon their own judgment." See Knox's "The Justice and Policy of the late Act" &c., 1774, p. 9. This will partly account for the great changes in the measure between this draught and the form in which it was passed.

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Great Britain, and might alter the Laws and Constitution of the said Province in such manner as He should think most agreable to natural Justice and sound Policy. And Whereas many other Countries and Territories, the greatest part whereof lay waste and uncultivated, were likewise ceded by the said Treaty to His Majesty :—And Whereas His said Majesty by His Royal Proclamation, bearing date the seventh day of October, in the third year of His Reign, Reciting that great part of the said acquisitions had been cast into four distinct and separate Governments, called Quebec, West Florida, East Florida, and Grenada. And that other parts had been annexed to the Governments of Newfoundland, Nova Scotia and Georgia, And further Reciting that it would greatly contribute to the speedy settling of the said new Governments that His Majesty's loving Subjects should be Informed of His Paternal Care for the Security of the Liberty and Property of those, who were and should become Inhabitants thereof, His Majesty thought fit to Publish and Declare, that He had in the Letters Patent under His Majesty's Great Seal of Great Britain, by which the said Governments were constituted, given express Power and direction to his said Governors of the said Colonies respectively that so soon as the state and circumstance of the said Colonies would admit thereof, They should, with the advice and consent of the Members of His Majesty's Council, Summon and call General Assemblies within the said Governments respectively in such manner and form as was used and directed in those Colonies and Provinces in America, which were under His Majesty's immediate Government; with Power to make constitute and ordain Laws, Statutes and Ordinances for the Public peace, Welfare and good Government of His Majesty's said Colonies and of the People and Inhabitants thereof; as near as might be, agreable to the Laws of England and under such regulations and restrictions, as were used in other Colonies, and that in the mean time and until such Assemblies could be called as aforesaid, all Persons Inhabiting in or resorting to His Majesty's said Colonies, might confide in his Royal Protection for enjoying the benefit of the Laws of His Majesty's Realm of England. And that for such Purpose, His Majesty had given power under His Great Seal, to the Governors of His said Colonies respectively, to Create and Constitute (with the advice of His Majesty's said Councils respectively) Courts of Judicature and Publick Justice, within His Majesty's said Colonies, for the Hearing and determining all Causes, as well Criminal as Civil, according to Law and Equity ; and, as near as might be agreable to the Laws of England ; with Liberty to all Persons, who might think themselves aggrieved by the Sentence of such Courts, in all Civil Cases, to appeal under the usual Limitations and restrictions to His Majesty in His Privy Council.

And Whereas such commissions were accordingly passed under the Great Seal of Great Britain to the respective Governors of the said Provinces and amongst the rest to the Governor of Quebec, requiring amongst other things, that each member of the Assemblies so to be called, should take the Oaths commonly called the Oaths of Allegiance Supremacy and Abjuration ; and to make and subscribe the Declaration against Transubstantiation, mention'd in an Act of Parliament made in the Twenty fifth Year of the Reign of King Charles the Second Intitled "An Act, for preventing Dangers which may happen by Popish Recusants."

And Whereas by an Ordinance made and Published by the Governor and Council of Quebec, bearing date the seventeenth day of September in the Year of Our Lord One thousand seven Hundred and sixty four, several Courts of Criminal and Civil Jurisdiction were created, with Power to proceed according to the Laws of England, and agreably to Equity, having regard nevertheless to the Laws of England as far as the Circumstances and then present situation of things would admit.

And Whereas several Commissions were, in pursuance thereof given and granted under the Great Seal of the said Province of Quebec to Chief Justices and other Judges and Justices, to hold the said Courts and exercise authority by virtue of the same.

And Whereas great Doubts have arisen whether the whole Law of Canada was subverted and the Law of England introduced by the said Proclamation to take place as the Constitution of that Country till an Assembly should be called And also whether the Legislative Ordinances issued by the Governor and Council under the Kings Authority since the Proclamation were valid or void and by reason of such Doubts great

confusion and uncertainty hath arisen and distracted the Minds of the People of the said Province.

And Whereas the Plan of Civil Government proposed by such Construction of the Proclamation and which hath been attempted to be carried into Execution in manner above mentioned is inapplicable to the Condition and Circumstances of the Province of Quebec which did contain at the Conquest thereof above One Hundred Thousand Inhabitants professing the Roman Catholick Religion and enjoying an established form of Constitution and a System of Civil and Criminal Law by which their Persons and Property had been for ages protected governed and ordered.

May it therefore please your most excellent Majesty, That it may be Enacted ; And it is hereby Enacted by His Most Excellent Majesty, by and with the advice and Consent of the Lords Spiritual and Temporal and Commons in Parliament assembled, and by the Authority of the Same,[x a] [1] That the said Proclamation so far as the same relates to the Civil Government & Administration of Justice of and in the said Province of Quebec and the Commissions have been granted to the Governors of the said Province of Quebec for the time being, and *the said Ordinance*[3] [2] made by the said Governor and Council of Quebec *bearing date the Seventeenth day of September in the year of our Lord one Thousand, seven Hundred and sixty four ; and all other Ordinances* relative to the Civil Government and Administration of Justice in the said Province and all Commissions to Judges and other officers, in pursuance thereof, be, and the same are hereby Revoked, Annulled and made void from and after the day of next.

And be it further Enacted by the Authority aforesaid, That His Majesty's Subjects of and in the said Province of Quebec, as the same is described in, and by the said Proclamation and Commissions And also of all the Territories part of the Province of Canada at the time of the Conquest thereof which His Majesty, his Heirs or Successors may think proper to annex to the said Government of Quebec may have hold and enjoy their Property, Laws, Customs, and Usages, in as large, ample and beneficial manner, as if the said Proclamation, Commissions Ordinances and other Acts & Instruments had not been made, and as may consist with their allegiance to His Majesty and subjection to the Crown and Parliament of Great Britain.[3]

And Whereas the Abolition of the use of the torture and of those severe punish-
vide[4] ments to which the Inhabitants of Canada were formerly exposed and the
Clause A. Introduction of a more mild and certain Law in criminal cases would be highly beneficial to them and they are truly sensible of the same, Be it therefore Enacted by the Authority aforesaid that no Crimes or Offences shall be High Treason or Misprision of Treason in the Province of Quebec and the dependencys thereof, But such as are high Treason or Misprision of High Treason by the Laws and Statutes now in force in Great Britain ; and that the said Laws and Statutes shall be used and observed in Cases of High Treason and Misprision of High Treason in all respects whatsoever. And be it further Enacted That in regard to all other offences for which by the Laws in force in Canada on the said 13th September 1759 the Offender was liable to suffer the

[1] These marks have no references connected with them either in the margin or at the foot of the draught ; but they evidently refer to an additional clause or clauses to be introduced by which the limits of the Province would be greatly extended. The proposal for an extension of the limits, which was largely adopted in the third draught of the bill, is given in the paper which follows this draught. See p. 381.

[2] This figure, which is in the original, seems to have no special significance, as the changes here introduced are but slight ; it probably refers to some remark on the ordinance.

[3] Wedderburn, in his letter to Dartmouth, cited in note 1, p. 377, comments on this as follows :—" Mr. Hey mentioned to me two objections to the former part of the Bill which I think are material. The Proclamation, Commissions &ce are annuled and by the next Clause It is declared 'that His Majesty's 'subjects in Canada shall enjoy their Laws and Customs as beneficially as if the Proclamation had not been 'made and as is consistent with their Allegiance and Subjection to the Crown and Parliament of Great 'Britain.' These words he thinks will much perplex the Canadian. Is his Religion lawful or tolerated, or unlawful. Are the rights of Succession, of Marriage, of Contract, that have accrued since 1764 and been enjoyed according to the Law of England rescinded, for the act is in some measure declaritory as to the sense of the Proclamation. What is to be the condition of the English Canadian ? Is he or is he not included in the description of His Majesty's Subjects of and in Canada ? He thinks it would be much better to express clearly what rights shall be restored to the Canadian and that He would be better satisfied with a less extensive and a more certain Provision for him.' M 384, p. 253.

[4] This refers to the new clause drawn by Wedderburn and Hey, as indicated in note 1, p 377, which was substituted for this section in the third draught, and which provided for the complete retention of the criminal law of England. See third draught, p. 384.

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pains of Death the party accused shall be tried and acquitted or condemned and punished according to the Laws of England. Provided always that whereby the Laws of England the benefit of Clergy is allowed upon any Conviction the Offender in such case shall only be fined and Imprisoned or bound to his good Behaviour, And Provided also That no Judgement shall after the Verdict given, be arrested upon any objection of Informality in the Indictment or Discontinuance in the Record.

And Whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of Quebec, the occasions of which cannot now be foreseen nor without much Delay and Inconvenience provided for, without entrusting that Authority for a certain time and under proper Restrictions to Persons Resident there.

And Whereas it is at present inexpedient to call an Assembly Be it therefore Enacted by the Authority aforesaid That it shall and may be lawful for His Majesty His Heirs and Successors by *his or their Letters Patent*[1] *under the Great Seal of Great Britain* to constitute and appoint a Council for the affairs of the Province of Quebeck and its dependencys to consist of such Persons resident there not exceeding () nor less than () as His Majesty His Heirs and Successors shall be pleased to appoint and *of such other Persons resident there as upon the death removal, or absence, of any of the Members thereof, shall be nominated by His Heirs or Successors under His or their Sign Manual to supply the vacancy*; Which Council so appointed and nominated or the major part thereof shall have full Power and Authority to make Ordinances for the Peace, Welfare and good Government of the said Province in all cases whatsoever, with the consent of His Majesty's Governor or Commander in Chief or in his Absence of the Lieutenant Governor for the time being.

Provided always That every Ordinance so to be made shall within () months be transmitted by the Governor Commander in Chief or in his absence by the Lieutenant Governor and laid before His Majesty for his royal approbation and if His Majesty shall think fit to disallow thereof The same shall cease and be void from the Time that His Majesty's Order in Council thereupon shall be promulgated at Quebec And Provided also That no Ordinance touching Religion or by which any Punishment may be Inflicted greater than fine or Imprisonment for Three Months, or by which any Duty, Tax, or Rate may be Levied shall be of any force or effect until the same shall have received His Majesty's Approbation And Provided also That no Ordinance shall be passed at any Meeting of the Council except between the day of and the day of unless upon some urgent occasion, in which Case every Member thereof resident at Quebeck or within Miles thereof shall be personally summoned by the Governor or in His absence by the Lieutenant Governor to attend the same.

And be it further Enacted &c^a^ That nothing herein contained shall extend or be construed to extend to prevent or hinder His Majesty His Heirs and Successors by his or their Letters Patent under the Great Seal of Great Britain from erecting, constituting and appointing such Courts of Criminal, Civil and Ecclesiastical Jurisdiction within and for the said Province of Quebeck and its dependencys and appointing from time to time the Judges and Officers thereof as His Majesty His Heirs and Successors shall think necessary and proper for the circumstances of the said Province.

Endorsed :—Dra^t^. of Bill

[1] Concerning this section, Wedderburn, in his letter to Dartmouth, cited in note 1, p. 377, says :—"The empowering His Majesty to create the Legislative Council by Letters Patent instead of appointing It directly by the Act of Parliament seems to me an immaterial Alteration; supposing that it is necessary (as I conceive it is) to describe in the Act the Powers and Authority of that Council. In either way the Nomination of the Members must be vested in the King and no greater Power in effect is acquired by the first mode than by the latter tho' in appearance the Power of erecting a Legislative Council seems to import more than the power of naming the Members and will from the appearance excite more opposition.

"The latter Clause I take to be unnecessary as I do not see how the Act restrains the King from appointing Judges and erecting Courts of Justice, I have therefore drawn It as a saving and not as an enacting Clause." M 384, p. 252.

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PROPOSED EXTENSION OF PROVINCIAL LIMITS.[1]

The Limits of the Government of Quebec as declared in the Proclamation of 1763 are as follows, Vizt. "bounded on the Labrador Coast by the River St. John, & from thence by a line drawn from the head of that River thro' the Lake of St. John to the South end of the Lake Nipissin; from whence the said Line crossing the River St. Lawrence and the Lake Champlain in 45 Degrees of No Latitude, passes along the High Lands which divide the Rivers that empty themselves into the said River St. Lawrence from those which fall into the Sea; and also along the North Coast of the Bay des Chaleurs, and the Coast of the Gulph of St. Lawrence to Cape Rosiers, and from thence crossing the Mouth of the River St. Lawrence by the West end of the Island of Anticosti terminates at the aforesaid River of St. John."

The Kings Servants were induced to confine the Government of Quebec within the above Limits, from an apprehension that there were no Settlements of Canadian Subjects, or lawful possessions beyond those Limits, and from a hope of being able to carry into execution a plan that was then under Consideration for putting the whole of the Interior Country to the Westward of our Colonies under one general control & Regulation by Act of Parliament.[2] It was also conceived that there was no claim of Possession on the Coast of Labrador to the East of the River St. John, and therefore from an apprehension that a valuable Cod Fishery might be carried on upon that Coast, it was annexed to the Government of Newfoundland.

The plan for the regulation of the Interior Country proved abortive & in consequence thereof an immense tract of very valuable Land within which there are many Possessions and actual Colonies existing under the Faith of the Treaty of Paris has become the Theatre of disorder & Confusion leading to causes that must affect the public Tranquility and weaken the Authority of this Kingdom, whilst those Colonies which exist under the Faith of the Treaty remain either without the protection or the control of Civil Government.[3]

It has also been discovered that there are a variety of claims to possessions upon the Coast of Labrador between the River St. John and the Straits of Belle Isle, and that by far the greatest part of that Coast is impracticable for a Cod Fishery and can only be used for that species of sedentary Seal Fishery which is in its nature inconsistent with the Regulations of the Fishery at Newfoundland.

In order therefore to obviate the dangers and disadvantages arising from the present defective state of the Interior Country. To give force and effect to the Power and Authority of the Crown within it. To give scope to the many Commercial advantages which may be derived from it. to extend the benefits of Civil Government to the Settlements of Canadian Subjects that have been formed in the different parts of it,[4] and to

[1] Canadian Archives, Dartmouth Papers, M 385, p. 346. The boundary line as here proposed, indicates the limits within which it was desired to confine the English colonies. That it was largely adopted, despite the opposition of some supporters of the Ministry, will be seen from the third draught of the bill which follows. No clue is given as to the author of this proposal, but, as may be observed from a letter of Dartmouth to Cramahé of Dec. 1st, 1773, (See p. 338) this extension of the limits of the Province, like the establishment of the Roman Catholic religion, was represented as a direct concession to the Canadian noblesse and clergy in response to their petition. For other features of the policy which harmonized with this, see note 4 below, & note 1, p. 389.

[2] For the actual statement of the reasons for this policy, see the papers relative to the establishment of civil government in Quebec, p. 105 and pp. 110-11.

[3] This is a matter on which a great variety of evidence is recorded and many different opinions expressed. The chief of these references are scattered throughout the letters and reports contained in the State Papers of the Q series, the Home Office Papers, and the Haldimand Papers, some of which are duplicates.

[4] In addition to the statements made in such letters as that of Dartmouth to Cramahé of Dec. 1st, 1773, (see p. 338) we find the statement of Wm. Knox the Colonial Under Secretary, after the Quebec Act was passed, that "the whole of the derelict country, is, by the first clause of the Act, put under the jurisdiction of the Government of Quebec, with the avowed purpose of excluding all further settlement therein, and for the establishment of uniform regulations for the Indian trade." "The Justice and Policy of the late Act" &c. p. 20. See also note 1, p. 389.

give Stability & advantage to the Sedentary Fisheries on the North side of the Gulph of St. Lawrence, it is proposed that the

Limits and Boundaries of the Government of Quebec shou'd be altered and enlarg'd in the following manner, that is to say,

That the said Government should be bounded on the side of His Majesty's other Colonies by a Line drawn from the Head of Bay Chaleurs (including the North side of the said Bay and all the Lands between that and the River St. Lawrence) along the High Lands which divide the Rivers which empty themselves into the River St. Lawrence from those which fall into the Atlantick Ocean until the said line reaches lake Champlain in 45 Degrees of No Latitude.

The said line to be continued from thence in a direct course to the first spring or Head of Hudson's River, and from thence in a dire t course to the entrance of Lake Ontario from the said River St. Lawrence. That the said Line should pass from thence across the said Lake to the Mouth or entrance of the Strait of Niagara and should pass along the East side of the said Strait until it falls into the Northern Boundary of the Province of Pensylvania, and from thence it should follow the course of the said Boundary line as well on the North as the West, to the Point where it intersects the River Ohio, and so following the course of the said River, from the said Point to its confluence with the River Mississippi. That the said Government should comprehend all the Coast of Labradore as far East as Esquimaux River & be bounded on the North by a Line drawn due West from the mouth of the said River to the southern Limits of the Territory granted to the Hudsons Bay Company and to follow the course of the said Limits as far as the River Mississippi, the said River to be the Boundary on the West from the point where it is intersected by the Southern Limits of the Territory granted to the Hudson's Bay Company as aforesaid, as low down as the Mouth of the River Ohio.

Endorsed :—Paper relative to the extension of the Limits of Quebec.

THIRD DRAUGHT OF THE QUEBEC BILL.[1]

An Act for making more effectual Provision for the Government of the Province of Quebec in North America; and for removing Doubts which have arisen relative to the Laws and Constitution of the said Province since His Majesty's Royal Proclamation of the 7th of October 1763.

Whereas His Majesty by His Royal Proclamation bearing date the 7th day of October in the Third year of His Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories and Islands in America Ceded to His Majesty by the Definitive Treaty of Peace concluded at Paris on the 10th day of Febry 1763 And Whereas by the Arrangements made by the said Royal Proclamation a very large part of the Territory of Canada, within which there were several Colonies and Settlements of the Subjects of France who claimed to remain therein under the faith of the said Treaty, was left without any Provision being made for the administration of Civil Government therein, and other parts of the said Country where sedentary Fisheries had been established and carried on by the subjects of France, Inhabitants of the said Province of Canada under Grants and Concessions from the Govern' thereof, were annexed to the Gov' of Newfoundland, and thereby subjected to regulations inconsistent with the nature of such Fisheries. May it therefore please your most excellent Majesty that it may be enacted; and it is hereby enacted by The Kings most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same That all the said Territories, Islands and Countries, heretofore part of the Province of Canada in North America, extending Southward to the banks of the River Ohio, Westward to

[1] Canadian Archives, Dartmouth Papers, M 385, p. 311. The alterations and additions by which the second draught was developed into the third are given in part in the notes on the second draught. Other explanations are furnished in the memorandum which follows this draught of the bill.

the banks of the Mississippi and northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of England trading to Hudsons Bay, and which said Territories, Islands and Countries are within the limits of some other British Colony as allowed & confirmed by the Crown, or which have since the 10th Feby 1763, been made part of the Government of Newfoundland, be,and they are hereby annexed to, and part and parcel of the Province of Quebec as created and established by the said Royal Proclamation of the 7th of October 1763, for and during His Majesty's Pleasure; And Whereas the Provisions made by the said Proclamation in respect to the Civil Government of the said Province of Quebec and the Powers & Authorities given to the Governor & other Civil Officers of the said Province by the Grants and Commissions issued in consequence thereof, have been found upon experience to be inadequate to the State & Circumstances of the said Province the Inhabitants whereof amounting at the Conquest to above One hundred Thousand Persons professing the Religion of the Church of Rome and enjoying an established form of Constitution & system of Laws by which their Persons and Property had been protected, governed and ordered for a long series of years from the first Establishment of the said Province of Canada, Be it therefore further enacted by the Authority aforesaid, That the said Proclamation so far as the same relates to the Civil Government & Administration of Justice of & in the said Province of Quebec, & the Commission under the Authority whereof the Government of the said Province is at present administered & all & every the Ordinance & Ordinances made by the Governor & Council of Quebec for the time being relative to the Civil Government & Administration of Justice in the said Province and all Commissions to Judges & other Officers thereof, be, and the same are hereby revoked, annulled & made void from and after the Day of next.

Subject to the Kings Supremacy, as declared & established by an Act made in the first year of the Reign of Queen Elizabeth, over all the Dominions & Countrys which then did or thereafter should belong to the Imperial Crown of this Realm[1]—

And be it further enacted by the authority aforesaid that His Majesty's subjects professing the Religion of the Church of Rome of & in the said Province of Quebec as the same is described in & by the said Proclamation and Commissions, and also of all the Territories part of the Province of Canada at the time of the Conquest thereof, which are hereby annexed during His Majesty's Pleasure to the said Government of Quebec may have, hold & enjoy the free Exercise of the Religion of the Church of Rome, *so far as* the same is not inconsistent with the Kings Supremacy as established by act of Parliament and that the Clergy & other Religious of the said Church may hold receive & enjoy their accustomed Dues & Rights *with respect to such Persons only as shall possess the said Religion.* Provided nevertheless that nothing herein contained shall extend or be construed to extend to the Disabling His Majesty's His Heirs or Successors from the making such Provision for the Maintenance & Support of a Protestant Clergy within the said Province as He or they shall from time to time think necessary & expedient.

And be it further enacted by the Authority aforesaid that all His Majesty's Canadian Subjects within the Province of Quebec, & the Territories thereunto belonging, may also hold, and enjoy their Property & Possessions together with all Customs & Usages relative thereto, and all other their Civil Rights in as large ample & beneficial manner as if the said Proclamation, Commissions, Ordinances & other Acts & Instruments had not been made, and as may consist with their Allegiance to His Majesty & Subjection to the Crown and Parliament of Great Britain.

For which purpose be it further enacted by the Authority aforesaid that, in all matters of controversy relative to the Property & Civil Rights of any of His Majesty's Subjects, whether Canadian or English, Resort shall be had to the Laws of Canada and

[1] This clause which is written in the margin of this draught of the bill appears in the body of the fourth draught. See p. 403.

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not the Laws of England for the Decision of the same, and all Causes that shall hereafter be instituted in any of the Courts of Justice to be appointed within & for the said Province by His Majesty, His Heirs & Successors, shall, with respect to such Property & Rights be determined by the Judges of the same agreeably to the said Laws & Customs of Canada & the several Ordinances that shall from time to time be passed in the said Province by the Gov^r Lieut-Gov^r or Commander in Chief by & with the advice & consent of the Legislative Council of the same to be appointed in manner herein before mentioned & by no other Laws Customs or Usages whatsoever.

Provided always that it shall & may be lawful to & for every Person in the said Province, whether Canadian or English, that is Owner of any Goods or Credits in the same, and that has a right to alienate the said Lands, Goods or Credits in his Life time by Deed of Sale, Gift or otherwise to devise or bequeath the same at his or her death by his or her last Will & Testament to such Persons, & in such manner as he or she shall think fit, any Law, Usage or Custom; heretofore; or now prevailing in the Province, to the contrary hereof in any wise notwithstanding. And provided also that nothing in this Act shall extend or be construed to extend to any Lands that have been granted by His Majesty or shall hereafter be granted by His Majesty His Heirs & Successors to be holden in free & common soccage[1] & that it shall & may be lawful to & for any of His Majesty's Subjects at his, her or their respective Ages of 25 years to change the Tenure of Estate held of His Majesty, His Heirs or Successors into free & common soccage by any deed executed in the presence of two Witnesses & presented to the Chief Justice of the Province who shall summon a Jury to assess the sum to be paid to His Majesty in lieu of the Profits of the Seigniory & upon Payment thereof shall direct the Deed to be enrolled & the same being enrolled the Land shall from thenceforth be held as Lands in free & common soccage are held by the Laws of England.

And Whereas the Certainty & Lenity of the Criminal Law of England & the Benefits and Advantages resulting from the use of it have been sensibly felt by the Inhabitants from an Experience of more than nine years, during which it has been uniformly administered. Be it therefore enacted by the Authority aforesaid. That the same shall continue to be administered, and shall be observed as Law in the Province of Quebec and its Dependencies as well in the description & quality of the Offence, as in the method of Prosecution & Trial, and the Punishments & Forfeitures thereby inflicted to the exclusion of every other rule of Criminal Law, or mode of Proceeding thereon which did, or might prevail in the said Province before the year of Our Lord 1764. Anything in this Act to the contrary thereof in any respect notwithstanding: Subject nevertheless to such Alterations & Amendments as the Gov^r Lieut-Gov^r or Commander in chief of the s^d Province, by & with the advice & Consent of the Legislative Council of the said Province hereafter to be appointed, shall from time to time cause to be made therein in manner herein after directed.

And Whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of Quebec, the occasions of which cannot now be foreseen, nor without much Delay & Inconvenience be provided for without intrusting that Authority for a certain time & under proper Restrictions to Persons resident there

And whereas it is at present inexpedient to call an Assembly; Be it therefore enacted by the Authority aforesaid that it shall & may be lawful for His Majesty, His Heirs and Successors by Warrant under His or Their Signet, or Sign Manual and with the Advice of the Privy Council to constitute and appoint a Council for the Affairs of the Province of Quebec & its Dependencies to consist of such Persons resident there, not exceeding (23) nor less than (17) as His Majesty, His Heirs and Successors shall be pleased to appoint, and upon the Death, Removal, or Absence of any of the Members of the said Council, in like manner to constitute & appoint such and so many other Person, or Persons as shall be necessary to supply the Vacancy, or Vacancies; which Council so appointed & nominated, or the major part thereof shall have full Power and Authority to make Ordinances for the Peace, Welfare and good Government of the

[1] The remainder of this clause is left out in the 4th draught, in accordance with the criticisms of Hillsborough and Carleton, as accepted by Dartmouth. See p. 404 & note 1, p. 390.

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said Province, with the Consent of His Majesty's Governor, or in his absence of the Lieutenant Governor or Commander in Chief for the time being.

Provided always That every Ordinance so to be made shall within Months be transmitted by the Governor or in his Absence by the Lieutenant Governor or Commander in Chief for the time being, and laid before His Majesty for his Royal Approbation; And if His Majesty shall think fit to disallow thereof, the same shall cease & be void from the time that His Majesty's Order in Council thereupon shall be promulgated at Quebec: And provided also, That no Ordinance touching Religion, or by which any punishment may be inflicted greater than fine, or imprisonment for three Months shall be of any force or effect until the same shall have received His Majesty's Approbation: And provided also that no Ordinance shall be passed at any Meeting of the Council except between the day of and the day of unless upon some urgent occasion, in which Case, every Member thereof resident at Quebec, or within Miles thereof shall be personally summoned by the Governor, or in his absence by the Lieutenant Governor, or Commander in Chief for the time being to attend the same.

And be it further enacted &c[a] That nothing herein contained shall extend or be construed to extend to prevent or hinder His Majesty His Heirs or Successors by His or their Letters Patent under the Great Seal of Great Britain from erecting, constituting & appointing such Courts of Criminal, Civil and Ecclesiastical Jurisdiction within and for the said Province and its Dependencies, and appointing from time to time the Judges & Officers thereof as His Majesty, His Heirs and Successors shall think necessary & proper for the Circumstances of the said Province.

Endorsed:—Dra[t] of Bill.

NOTES ON THIRD DRAUGHT OF QUEBEC BILL.[1]

The first preamble, and enacting clause of the present Bill are entirely new, and are introduced in order to annex to Quebec during The King's Pleasure the Territories therein described, which are now, for the greatest part, without either the protection or comptrol of any Government whatever and for the rest subjected to the incompetent and improper Jurisdiction of Newfoundland. This possibly might have in general been done by the sole authority of the Crown, but it is conceived that it would have been liable to doubts that cannot exist in the present mode which is conceived to be more effectual, & of more proper notoriety.

The whole preamble of the former Bill, reciting and condemning the Proclamation and other consequential Acts of Government is omitted, and in lieu of it a very short preamble introduced stating the general inadequacy of those Regulations to the present State and Circumstances of the Colony.

The first enacting Clause of the present Bill does not materially differ from the first enacting Clause of the other, the only difference is that it does not revoke any other Commission to the Governor but the one now existing.

The Second and Third Clauses of the present Bill are proposed by M[r] Hey[2] in the place of the Second Clause in the old Bill that restores to the Canadians generally their Property, *Laws*, Customs and Usages, including as it is conceived under the word *Laws* not only all Civil Rights, but also all Ecclesiastical Laws and Authorities incident

[1] Canadian Archives, Dartmouth Papers, M 385, p. 337. These notes are evidently by Sol. Gen. Wedderburn, as may be gathered from his criticisms on the second draught of the bill addressed to Lord Dartmouth; see note p. 377. There was undoubtedly an intermediate draught of at least part of the bill, between the second and third draughts as here given, and it is to the intermediate form of certain clauses that some of these notes apply. It is evident, for instance, that the clause with reference to the Roman Catholic religion has been altered in the third draught from the form indicated in these notes; and we find that the alterations were due to the criticisms of Lord Mansfield upon the form in which the clause was left by Wedderburn and Hey. See below, note 1, p. 387.

[2] See note 3, p. 379.

thereto, which general Provision is restrained by the present Act to the free Exercise of the Romish Religion, as far as is consistent with the King's Supremacy, exempting Protestants from Payment of Tythes[1] and making the Laws and Customs of Canada in Civil Cases the Rule for Judgement in the Courts, under certain Limitations & Exceptions in respect to disposition of Property by will, and a mode of changing the Tenure of Lands held by Seigniory into Common Soccage.

The fourth Clause of the present Bill introduces the whole Criminal Laws of England which by the Corresponding Clause of the old Bill was only in part introduced & under Limitations.

The rest of the Clauses in both Bills respecting the Legislative Council are very much the same; there is no material difference except by the new Bill their appointment is to be by sign Manual in like manner as Councillors in other Colonies are appointed—by the former Bill they were to be appointed under the Great Seal of Great Britain, which besides deviating from the rule in other Cases is liable to other obvious Objections.

Endorsed :—Notes of Alterations in the Quebec Bill.

THE CLAUSE CONCERNING RELIGION IN THE THIRD DRAUGHT.[2]

The Proviso in favour of the Protestant Subjects of Quebec,[3] if it is intended to operate only as a saving to the clause which gives to the Canadians the free exercise of their Religion appears to me to be unnecessary—from a Church merely tolerated, as the Romish Church is by this Act, There can be little occasion to resort to any special protection, immunity or Privilege in behalf of any body, for existing only by Permission of the state, it can claim nothing, enforce nothing, exercise no controul or Authority over its own members but by consent, & it should seem useless to reserve to others by express Provision of Law, what cannot be taken from them but by their own choice & approbation.

In this light therefore the clause seems to be unnecessary.

But if it is intended to operate as a saving to the clause immediately preceding which gives the Canadians the Enjoyment of their ancient civil Rights customs and Usages, I apprehend it will be found an Exception as large as the Rule; and leave it still in doubt, whether in a matter of civil Right the Canadian or English Law where they differ together with the form & mode of Proceeding, shall have the Preference. A Case which came before me in Judgement, & which is very likely to happen again will possibly put the objection I mean to state in a clear light before your Lordship.

By the custom of Paris which your Lordship, I presume, means to restore, the Mason Carpenter & other Artificers employed in building a House for another, Have, by an implied Contract between them & the owner for whom they build, of which they need only make a minute in a Notary's Office a mortgage upon the house which no incumbrance whatever prior or subsequent can Affect, but they may follow their demand thro an hundred mesne assignments into the hands of the present Possessor, & insist upon its being sold to pay them upon failure of the Person with whom they first contracted to build. should those Canadian Artificers bring an action in their usual form (wholly different from our own) against an Englishman who had purchased such a house for a Valuable consideration, might not He, & would not He be authorized to say, I will not answer in this mode of Process nor be bound by this Law? Every *Privilege*

[1] This is the portion to which, as left by Wedderburn and Hey, Lord Mansfield takes objection, as stated in the document which follows this, and which in consequence of his criticisms was altered in accordance with his suggestions, and appears in that altered form in the third draught.

[2] Canadian Archives, Dartmouth Papers, M 385, p. 340. It appears very probable, from the reference in the second paragraph, as well as from the whole tone and purpose of the proposals, that these criticisms were made by Lord Mansfield, and this is confirmed by his letter to Lord Dartmouth; see note p. 387.

[3] This refers to the clause as draughted by Wedderburn and Hey; see above p. 383 and note 1, this page, and which as the result of this criticism was amended as it appears in the first clause of the third draught.

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Protection & advantage of *what Nature* soever *or kind* that I am intitled to by the Laws & Constitution of the Realm of England, are expressly reserved to me, amongst which I reckon the Tryal by a Jury as an Eminent one. Let these men bring their Ejectment upon their mortgage Title & let the tresspass be enquired into by a Jury according to the good old forms & usages of the Realm of England, & not by Laws & in a mode of Proceeding unknown & not used there & which derogate from the Rights of a british subject.

What answer could be given to a demand of this kind which would not militate either with the Law or the Exception & who would say which was intitled to the Preference ?

And with submission to your Lordship I do not see how it is possible to alter the Provisional clause to any advantage or find any form of words to reconcile it in substance with the other.

Whatever is to operate as an Exception to a positive general Law ought I apprehend to be clearly & expressly pointed out. it is your Lordships Intention (I presume) to revive the whole canadian Law in matters of a civil Nature, to make it the general law of the country to govern british as well as canadian Property by its Rules if your Lordship intends any reservation with respect either to the Laws or the Administration of them, in favour of the british subjects, it must, I apprehend be clearly ascertained where & in what instances it should take Place. a General reservation like that contained in the clause will either operate nothing, or go to the destruction of the whole. for if the Legislature does not draw the Line I know not well how any Judge can do it.

The Legislative Council cannot do it. They cannot restrain or define privileges reserved by the Act of Parlt. nor as I should conceive even explain or determine them.

With great submission therefore to your Lordships better Judgement I conceive that clause must be wholly struck out or more particularly explained.

Will your Lordship permit me to add a word or two upon the subject of Religion as it is affected by this Act of Parliam^{t}.

That your Lordship intends only a bare Toleration for the R. C. Religion without any maintenance or support for the Clergy appears obvious from the manner of penning the statute.

The Clause which mentions & allows the Exercise of Religion is totally silent with respect to the Clergy or any right belonging to them & the cautious use of the words *civil Rights* in the clause that restores them to their old Laws & customs, seems to distinguish & exclude Ecclesiastical ones.

But will your Lordship (upon reflection) think it sufficient barely to tolerate a large & powerful Body of Men the R. C. Clergy in Canada, in the exercise of their Religion, without any other means of support than what is to arise from the Voluntary contribution of their Parishioners, or does your Lordship apprehend any mischief or great inconvenience would arise from acknowledging their right to a decent & moderate maintenance under the sanction of a british Act of Parliament.

To say nothing of the discontent it would occasion will your Lordship think it quite consistent with the terms of the treaty—under which the property of the Clergy as well as Laity seems to have been reserved to the owners— & the Right to a decent support by Tithes seems to be as much the Property of the Clergy, as the seigneurial lands of the seigneurs, or any lay Property whatsoever of a Layman.

Power & Authority neither belongs to them by treaty nor is it consistent with a Protest^{t} Govt. to suffer them to be retained—but subsistence seems to be their right, & under this Idea, I have taken the Liberty to make an additional clause, reserving the Tithe of Protestants for a Protestant clergy when his Majesty shall think proper to intitle any to demand it.[1]

[1] This is evidently the clause which has been incorporated into the third draught of the bill and which makes provision for the collection of tithes by the Roman Catholic clergy, and reserves the right to provide for a protestant clergy as well. On April 28th the following note was sent from Lord Mansfield to Lord Dartmouth :—" My Lord I rec^{d} the inclosed Dr^{t} last night at 10 o'clock—I have read it over. * * * * * * * * * * * * * I would suggest two alterations upon the Plan as it stands—One, which I have just put into the Dr^{t} in a piece of Paper relative to the Supremacy—I mean it to avoid, what L^{d} North & y^{r} Lo^{p} seemed very desirous of avoiding the necessity of the Canadian Gentlemen taking the Oath

For the manner in which the whole of what your Lordship gave me when I had the Honour to be with you on Saturday will then stand I refer your Lordship to the Paper itself

LORD HILLSBOROUGH'S OBJECTIONS TO THE QUEBEC BILL IN ITS PRESENT FORM[1]

First enacting Clause

The extention of the boundaries to the North so as to comprehend the Labrador coast his Lordship approves, but has insuperable objections to the extention to the Mississippy and Ohio. His reasons as far as I can recollect them are these. If an extention of the boundaries for the sake of Jurisdiction only over the Inhabitants was intended. There is no occasion for doing it by Act of Parliament as it is in the power of the Crown at present to give such jurisdiction if thought fit. And it is better to do it by the authority of the Crown *only*, because the jurisdiction so given may be limited & restrained in such manner as to answer all the purposes of Government and to avoid the inconveniencies with which a general extention or annexation will be attended.

Third & fourth enacting Clauses.

But from the Terms in which the extention is made and what is said in the subsequent Clauses his Lordship supposes that it is intended to make Parliament *declare* that it is right and proper to *settle* The Territories annexed, for these Lands & Inhabitants are put in exactly the same state as those within the present Limits. An inducement is held out to the Roman Catholick subjects of Quebec and to all other Roman Catholics to remove into these annexed Countries by granting them the French Laws & Customs of Canada and the Free exercise of their Religion.

If this be the case every reason & argument his Lordship had to offer against the Ohio Grant urges him with Tenfold strength to oppose this proceeding.

2. Proviso of 5th Enacting Clause.

His Lordship objects to the granting of any Lands in the Province in free & common Soccage & refers to a Report of the Board of Trade for his

of Supremacy. The other relates to the Right of Tithes &^{ce} depending upon the Man's professing the Popish Religion. Any man who denies professing it will be excused. They should pay to the Priest till the time is ripe for their paying to the Minister of some other Religion. * * * * *. Your Lo^{ps} most ob^{t} hu. Serv^{t} Mansfield." M 384, p. 268. To this Lord Dartmouth made the following reply

"L^{d} Mansfield 1 May 1774

"My Lord

"I have laid before his Majesty's Confidential Servants the alteration your Lord^{p} has been so good to suggest in the Quebec Bill, & they were unanimously of opinion to adopt the first relative to the Supremacy. The other they thought unnecessary, because it is his Majesty's Intention to make immediate provision for a Protestant Clergy, from the tithes of the Estates of Protestants so that none can elude the payment by denying the Profession of the Popish Religion. Their Lord^{ps} thought fit to alter the stile of the clause w^{ch} enacts the free exercise of the Romish Religion to make it declaritory = this, we conceive, will obviate any doubts that might have been created by it, & prevent any ill consequences, it might be thought likely to have in other parts of his Majesty's Dominions. With these alterations I hope the Bill will have your Lord^{ps} approbation. I have the Honour to be &^{ce} D." M 385, p 278. The suggestion with reference to the oath of supremacy which Lord Mansfield had enclosed, is preserved in the Dartmouth Papers, endorsed "Clause (A)," M 385, p. 329. This was introduced as it stands into the Quebec Bill while going through Parliament, and provides a special oath for the Roman Catholics, instead of that of the Ist of Queen Elizabeth. See p. 392.

[1] Canadian Archives, Dartmouth Papers, M. 385, p. 356. As the accompanying letter will show, these objections of Hillsborough and Carleton to parts of the third draught of the Quebec Bill were stated in their present form by Wm. Knox, the Under Secretary of State for the Colonies. "My Lord In consequence of my having sent Lord Hillsborough a Copy of the Quebec Bill by Your Lordships Orders, I had a message from his Lordship this morning and lest I should not be able to find your Lordship before dinner I have put down upon the inclosed paper what I collect to be his sentiments respecting the Bill. I have also added what Gen^{l} Carleton beggd I would mention from him to your Lordship respecting one Clause. I have ventured to point out such Amendments as would in my opinion render the Bill unexceptionable to both, and without injuring any of your Lordships purposes. I must however acquaint your Lordship that Lord Hillsborough said he had not sufficiently considered all other parts of the Bill having had it only yesterday afternoon, but that if he found anything else to wish alter'd, he would communicate his ideas thro' me to your Lordship as he desired to do those I have stated. Your Lordships very faithful and obedient Servant. Will Knox 30th April 1774." M 385, p. 270.

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reasons for continuing the french mode of Seigneuries as the most fit for the purposes of Government & as corresponding with the whole scope & purpose of the Bill.[1]

3 Proviso to the 5th Clause. These reasons are still more forceable for leaving out intirely the provision for converting Lands held in Seigneurie into Free & common Soccage. His Lordship thinks the Crown ought not to change those Tenures even when the Lands come into the hands of English subjects, much less relinquish all right of continuing them, and vesting a power in the French as well as English possessors to compel the Crown to change them at their pleasure.

3d Proviso to the 5th Clause. General Carleton makes the same objections to these Proviso's as Lord Hillsborough does, and adds with respect to the latter That the French Seigneurs do not now desire to change their Tenures. That they should be sensible of the favour and ask it before it is granted. That even when that comes to be the case The Crown can change the Tenure whenever it is thought fit to do so without this clause and can make a proper discrimination in granting the favour to those only who by their conduct may merit it. That the Tenure by Seigneurie gives the Crown great power over the Seigneur, which power will be done away by changing the Tenure into free & common Soccage. That the Evil disposed Seigneurs will therefore be the first to avail themselves of the permission to change their Tenures in order to get rid of that power and be able to do mischief with less restraint.[2]

The Amendments which will be the consequence of adopting what appears to be the Ideas of Lord Hillsborough are these, To leave out in the Preamble from the words *Territory of Canada* to the words *where sedentary Fisheries*, And in the first enacting clause after the words *Canada in North America* insert *as described in the said Proclamation* and *extending northward to the Southern boundary &c.* leaving out the intermediate words *Southward to the Banks of the River Ohio, Westward to the banks of the Mississippy.*

These amendments will obviate the objections to the First Third & Fourth Enacting Clauses.

By leaving out the 3rd Proviso to the 5th enacting Clause General Carleton's objection will be wholly obviated and the most material part of Lord Hillsborough's will be also removed, for although they both *wish* the

[1] As advocated by Carleton and others, and as frankly declared in the debates on the Quebec Bill, Canada and the whole of the western territory were to be reserved for the French and the Indians, though Hillsborough would reserve the west for the Indians alone. Knox thus gives expression to Hillsborough's views: "The Earl of Hillsborough was so fully persuaded of the dangerous consequences to this country and Ireland, of extending the settlements in the North American Colonies, that I had no occasion to make his Lordship any representations upon that subject. A very judicious measure which he had planned and promoted for confining them on the east side to the heads of the rivers which fall into the Atlantic Ocean, was then carrying into execution, and a boundary line was actually drawn and marked out at the backs of them all, from the Hudson's river to the Mississippi, and treaties were made with the Indians for restraining the settlements within it." Extra Official State Papers &c. London, 1789. Vol. 2, p. 43. It was, as Hillsborough says, the whole scope and purpose of the bill to satisfy the French Canadians, and by restoring French law and feudal tenures, and guaranteeing the Roman Catholic religion, to render the whole region as objectionable to the British settlers as possible. See Lord Dartmouth's reply which follows this document. As a sample of the statements of the Government's policy, made during the debates on the bill, the following may be taken from one of Wedderburn's speeches:—"I think there ought to be no temptation held out to the subjects of England to quit their native soil, to increase colonies at the expence of this country. If persons have gone thither in the course of trade, they have gone without any intention of making it their permanent residence; and, in that case, it is no more hardship to tell them, 'this is the law of the land,' than it would be to say to a man whose affairs induced him to establish himself in Guernsey, or in any other part of North America. With regard to the English who have settled there, their number is very few. They are attached to the country either in point of commercial interest or they are attached to it from the situations they hold under government. It is one object of this measure that these persons should not settle in Canada." Cavendish's Debates &c. p. 57.

[2] For Carleton's views as to the future of Canada and the necessity for restoring and maintaining the French feudal system there, see the following among other documents:—Carleton to Shelburne, Nov. 25, 1767, particularly the latter part, p. 198: also his letter of Dec. 24, 1767, p. 201; The Draught of an Ordinance &c., p. 204; Additional Instructions to Carleton in 1771, p. 295.

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Lands may be hereafter granted in Seigneuries as heretofore yet they do not stand out to limit the Crown from granting them otherways if thought fit.[1]

DARTMOUTH'S REPLY TO HILLSBOROUGH.[2]

1 May 1774.

Ld Hillsborough.

My DEAR LORD, Mr Knox has stated to me your Lordps two objections to the Canada Bill, wch I propose to lay before the House of Lords tomorrow & I have communicated them to the Cabinet, who are unanimously of opinion that the extension of the Province to the Ohio & Mississipi, is an essential & very useful part of the Bill; it provides for the establishment of civil government over many numerous settlements of french subjects, but does by no means imply an intention of further settling the Lands included within this extension, & if it is not wished that British Subjects should settle that country nothing can more effectually tend to discourage such attempts, wch in the present state of that Country, yr Lordp knows very well, it is impossible to prevent. Yr Objection to The clause allowing a change of Tenure their Lordps thought proper to come into & it is accordingly struck out of the Bill.

I am, my dear Lord,
Yr &c. &c.
D.

THE QUEBEC BILL AS RETURNED FROM THE COMMONS.[3]

A BILL

Intituled

An Act for making more effectual Provision for the Government of *Quebec*, in *North America.*

N.B.—The Words printed within Crotchets [], in [Old English] Letter, denote what was left out by the Commons, and those printed within a Parenthesis in (Italick), what have been inserted by them.

Whereas His Majesty, by His Royal Proclamation, bearing Date the Seventh Day of *October*, in the Third Year of His Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories, and Islands in *America*,

[1] As indicated in the reply of Lord Dartmouth which follows, the amendment indicated in this paragraph was made in the fourth draught of the bill, but the amendment with reference to the boundaries was not accepted.

[2] Canadian Archives, Dartmouth Papers, M 385, p. 276.

[3] Canadian Archives, Dartmouth Papers, M 385, p. 283. On June 13th the Quebec Bill was returned from the Commons with the following note:—"My Lord. I have Lord North's orders to transmit to Your Lordship the inclosed papers being the Quebec Act compleat as it passed the House of Commons this day, and have the Honour to be with the highest Respect My Lord Your Lordships Most Faithful and most obedient humble Servant John Robinson." 13th June 1774. M 385, p. 282. As the note at the head of this document indicates, by reference to the two sets of brackets, it expresses at once the fourth draught of the bill, as it was introduced to the House of Lords on May 2nd., and such amendments and additions to it as were made while it was passing through the Commons and were accepted by Lord North, the Prime Minister. In addition to the alterations already noticed in connection with the criticisms on the third draught of the bill, and the introduction of a clause in the latter part of the bill relating to taxes or duties, a few other slight changes will be observed, as between the third and fourth draughts. Several of the changes made after the bill reached the Commons were undertaken by the Government itself, notably the new form of oath drawn up by Lord Mansfield and accepted by the Government. See note p. 387. In the Dartmouth Papers two other clauses are given, marked (b) and (c), which were incorporated into the bill during its sojourn in the Commons. That marked (b) is the last clause in the bill, and relates to the regulation of trade. That marked (c) is the clause in the fifth paragraph of the bill safeguarding any right, title, or possession acquired under any grants made prior to this act. The additions and amendments introduced into the bill while in the Commons, as well as the numerous criticisms and amendments rejected by the Government, can best be followed in Cavendish's Debates on the Bill, which is indispensable to a proper understanding of the policy of the measure.

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ceded to His Majesty by the definitive Treaty of Peace concluded at *Paris*, on the Tenth Day of *February*, One thousand seven hundred and sixty-three:

And whereas, by the Arrangements made by the said Royal Proclamation, a very large [Part of the Territory of Canada], (extent of Country), within which there were several Colonies and Settlements of the Subjects of *France*, who claimed to remain therein under the Faith of the said Treaty, was left, without any Provision being made for the Administration of Civil Government therein, and [other] (certain) Parts of the [Said Country] (Territory of Canada), where sedentary Fisheries had been established and carried on by the Subjects of *France*, Inhabitants of the said Province of *Canada*, under Grants and Concessions from the Government thereof, were annexed to the Government of *Newfoundland*, and thereby subjected to Regulations inconsistent with the nature of such Fisheries:

May it therefore please Your most Excellent Majesty,

That it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same. That all the [said] Territories, Islands, and Countries, [heretofore Part of the Province of *Canada*], in *North America*, [extending Southward to the Banks of] (belonging to the Crown of *Great Britain*, bounded on the South by a Line from the Bay of *Chaleurs*, along the High Lands which divide the Rivers that empty themselves into the River *Saint Lawrence*, from those which fall into the Sea, to a Point in Forty-five Degrees of Northern Latitude, on the Eastern Bank of the River *Connecticut*; Keeping the same Latitude directly West, through the Lake *Champlain*, until, in the same Latitude, it meets the River *Saint Lawrence*; from thence up the Eastern Bank of the said River, to the Lake Ontario; thence through the lake *Ontario*, and the River commonly called *Niagara*; and thence along by the Eastern and South Eastern Bank of Lake *Erie*, following the said Bank, until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of *Pensylvania*, in case the same shall be so intersected; and from thence along the said Northern and Western Boundaries of the said Province, until the said Western Boundary strike the *Ohio*: But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank, until it shall arrive at that Point of the said Bank which shall be nearest to the North Western Angle of the said Province of *Pensylvania*; and thence by a right Line to the said North Western Angle of the said Province; and thence along the Western Boundary of the said Province, until it strike) the River *Ohio*, (and along the Bank of the said River) Westward, to the Banks of *Mississippi*, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of *England* trading to *Hudson's Bay*; and [which said] (also all such) Territories, Islands, and Countries, [are not within the Limits of some other *British* Colony, as allowed and confirmed by the Crown or] which have, since the Tenth of *February*, One thousand seven hundred and sixty-three, been made Part of the Government of *Newfoundland*, be, and they are hereby, during His Majesty's Pleasure, annexed to, and made Part and Parcel of, the Province of *Quebec*, as created and established by the said Royal Proclamation of the Seventh of *October*, One thousand seven hundred and sixty three.

(Provided always, and be it enacted, That nothing herein contained relative to the Boundary of the Province of Quebec, shall in any wise affect the Boundaries of any other Colonies.)

(Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter, any Right, Title, or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining, but that the same shall remain and be in Force, and have Effect, as if this Act had never been made.)

And whereas the Provisions made by the said Proclamation, in respect to the Civil Government of the said Province of *Quebec*, and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof

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[amounting] (amounted) at the Conquest, to above [One hundred] (sixty-five) thousand Persons, professing the Religion of the Church of *Rome*, and enjoying an established Form of Constitution, and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the first Establishment of the said Province of *Canada*; be it therefore further enacted by the Authority aforesaid, That the said Proclamation, so far as the same relates to the said Province of *Quebec*, and the Commission under the Authority whereof the Government of the said Province is at present administered, and all and every the Ordinance and Ordinances made by the Governor and Council of *Quebec* for the Time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the First Day of *May*, One thousand seven hundred and seventy five.

And for the more perfect security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That His Majesty's Subjects professing the Religion of the Church of *Rome*, of, and in the said Province of *Quebec*, [as the same is described in and by the said Proclamation and Commissions, and also of all the Territories, Part of the Province of *Canada*, at the time of the Conquest thereof, which are hereby annexed, during His Majesty's Pleasure, to the said Government of *Quebec*], may have, hold, and enjoy, the free Exercise of the Religion of the Church of *Rome*, subject to the Kings Supremacy, declared and established by an Act made in the First Year of the Reign of Queen *Elizabeth*, over all the Dominions and Countries which then did, or thereafter should, belong to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

Provided nevertheless, That [nothing herein contained shall extend, or be construed to extend, to the disabling] (it shall be lawful for) His Majesty, His Heirs or Successors, [from making] (to make) such Provision (out of the rest of the said accustomed Dues and Rights,) for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

(Provided always, and be it enacted, That no Person professing the Religion of the Church of *Rome*, and residing in the said Province, shall be obliged to take the Oath required by the said Statute, passed in the First Year of the Reign of Queen *Elizabeth*, or any other Oaths substituted by any other Act in the Place thereof, but that every such Person, who by the said Statute is required to take the Oath therein mentioned, shall be obliged, and is hereby required to take and subscribe the following Oath before the Governor or such other Person, or in such Court of Record as His Majesty shall appoint, who are hereby authorised to administer the same; *videlicet*,

"I A. B. do sincerely promise and swear, That I will be faithful, and bear true "Allegiance to His Majesty King *George*, and Him will defend to the utmost of my "Power, against all Traiterous Conspiracies and Attempts whatsoever, which shall be "made against His Person, Crown, and Dignity; and I will do my utmost Endeavour "to disclose and make known to His Majesty, His Heirs, and Successors, all Treasons, "and Traiterous Conspiracies and Attempts, which I shall know to be against Him, or "any of Them; and all this I do swear, without any Equivocation, mental Evasion, or "secret Reservation; and renouncing all Pardons and Dispensations from any Power "or Person whomsoever to the Contrary.

So help me God.

And every such Person who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to, for neglecting or refusing to take the Oath required by the said statute, passed in the First Year of the Reign of Queen *Elizabeth*.)

And be it further enacted by the Authority aforesaid, That all His Majesty's *Canadian* Subjects within the Province of *Quebec*, the Religious Orders and Communities only excepted, may also hold and enjoy their Property and Possessions,

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together with all Customs and Usages, relative thereto, and all other their Civil Rights, in as large, ample and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments, had not been made, and as may consist with their Allegiance to His Majesty, and Subjection to the Crown and Parliament of *Great Britain*; and that in all Matters of Controversy relative to Property and Civil Rights, Resort shall be had to the Laws of *Canada*,(as the Rule) for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province by His Majesty, His Heirs and Successors, shall, with respect to such Property and Rights, be determined [by the Judges of the same], agreeably to the said Laws and Customs of *Canada*, [and the several] (until they shall be varied or altered by any) Ordinances that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief for the time being, by and with the advice and Consent of the Legislative Council of the same, to be appointed in Manner herein-after mentioned.

(Provided always, That nothing in this Act contained shall extend, or be construed to extend, to any Lands that have been granted by His Majesty, or shall hereafter be granted by His Majesty, His Heirs and Successors, to be holden in free and common Soccage.)

Provided [always] (also) That it shall and may be lawful to and for every Person that is Owner of any Lands, Goods, or Credits in the said Province, and that has a Right to alienate the said Lands, Goods, or Credits, in his or her Lifetime, by Deed of Sale, Gift, or otherwise, to devise or bequeath the same, at his or her Death, by his or her Last Will and Testament; any Law, Usage, or Custom heretofore or now prevailing in the Province, to the Contrary hereof in any-wise notwithstanding.

[Provided also, That nothing in this Act contained shall extend, or be construed to extend, to any Lands that have been granted by His Majesty, or shall hereafter be granted by his Majesty, his heirs and Successors, to be holden in free and common Soccage:] (Such Will being executed either according to the Laws of *Canada*, or according to the Forms prescribed by the Laws of *England*.)

And whereas the Certainty and Lenity of the Criminal Law of *England*, and the Benefits and Advantages resulting from the Use of it, have been sensibly felt by the Inhabitants from an Experience of more than Nine Years, during which it has been uniformly administered; be it therefore further enacted by the Authority aforesaid, That the same shall continue to be administered, and shall be observed as Law, in the Province of *Quebec*, as well in the Description and Quality of the Offence, as in the Method of Prosecution and Trial, and the Punishments and Forfeitures thereby inflicted, to the Exclusion of every other Rule of Criminal Law, or Mode of Proceeding thereon, which did or might prevail in the said Province before the Year of our Lord One thousand seven hundred and sixty-four; any Thing in this Act to the Contrary thereof in any Respect notwithstanding; subject nevertheless to such Alterations and Amendments, as the Governor, Lieutenant Governor, or Commander in Chief for the Time being, by and with the advice and Consent of the Legislative Council of the said Province, hereafter to be appointed, shall, from Time to Time, cause to be made therein, in Manner herein-after directed.

And whereas it may be necessary to ordain many Regulations, for the future Welfare and good Government of the Province of *Quebec*, the Occasions of which cannot now be foreseen, nor without much Delay and Inconvenience be provided for, without intrusting that Authority for a certain Time, and under proper Restrictions, to Persons resident there:

And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs and Successors, by Warrant under His or Their Signet, or Sign Manual, and with the Advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of *Quebec*, to consist of such Persons resident there, not exceeding Twenty-three, nor less than Seventeen, as His Majesty, His Heirs and Successors, shall be pleased to appoint; and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like Manner, to constitute and appoint such and so many other

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Person or Persons as shall be necessary to supply the Vacancy or Vacancies; which Council, so appointed and nominated, or the major Part thereof, shall have [full] Power and Authority to make Ordinances for the Peace, Welfare, and good Government of the said Province, with the Consent of His Majesty's Governor, or, in his Absence, of the Lieutenant Governor, or Commander in Chief for the Time being.

Provided always, That nothing in this Act contained shall extend to authorise or impower the said Legislative Council to lay any Taxes or Duties within the said Province, (such Rates and Taxes only excepted, as the Inhabitants of any Town or District within the said Province, may be authorised by the said Council to assess, levy, and apply, within the said Town or District, for the Purpose of making Roads, erecting and repairing publick Buildings, or for any other Purpose respecting the local Convenience and Oeconomy of such Town or District.)

Provided also, and be it enacted by the Authority aforesaid, That every Ordinance so to be made shall, within Six Months, be transmitted by the Governor, or, in his Absence, by the Lieutenant Governor or Commander in Chief for the Time being, and laid before His Majesty, for His Royal Approbation; and if His Majesty shall think fit to disallow thereof, the same shall cease and be void from the Time that His Majesty's Order in Council thereupon shall be promulgated at *Quebec*.

Provided also, That no Ordinance touching Religion, or by which any Punishment may be inflicted greater than Fine or Imprisonment for Three Months, shall be of any Force or Effect, until the same shall have received His Majesty's approbation.

Provided also, That no Ordinance shall be passed, at any Meeting of the Council, (where less than a Majority of the whole Council is present, or at any Time), except between the First Day of *January*, and the First Day of *May*, unless upon some urgent Occasion; in which Case, every Member thereof, resident at *Quebec*, or within Fifty Miles thereof, shall be personally summoned by the Governor, or, in his Absence, by the Lieutenant Governor or Commander in Chief for the Time being, to attend the same.

And be it further enacted by the Authority aforesaid, That nothing herein contained shall extend, or be construed to extend, to prevent or hinder His Majesty, His Heirs and Successors, by His or their Letters Patent, under the Great Seal of *Great Britain*, from erecting, constituting, and appointing, such Courts of Criminal, Civil, and Ecclesiastical Jurisdiction, within and for the said Province of *Quebec*, and appointing, from Time to Time, the Judges and Officers thereof, as His Majesty, His Heirs and Successors, shall think necessary and proper, for the circumstances of the said Province.

(Provided always, and it is hereby enacted, That nothing in this Act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of *Quebec*, any Act or Acts of the Parliament of *Great Britain* heretofore made, for prohibiting, restraining, or regulating the Trade, or Commerce of His Majesty's Colonies and Plantations in *America*; but that all and every the said Acts, and also all Acts of Parliament heretofore made, concerning or respecting the said Colonies and Plantations, shall be, and are hereby declared to be, in Force, within the said Province of Quebec, and every Part thereof.)

Finis.

Endorsed :—A Bill,
(with emendations ;)
Intituled
An Act for making more effectual Provision for the Government of the Province of *Quebec*, in *North America*. (1774)

CHOSES INDISPENSABLES A CONSIDÉRER, ET A DETERMINER FIXÉMENT, SI LE BILL PRÉSENTÉ POUR LA PROVINCE DE QUEBEC A LIEU.[1]

1° les propriétés de toute espéce, droits et priviléges, sont accordés aux canadiens, *autant*, est-il dit, que *cela peut etre d'accord avec leur* ALLÉGIANCE *envers Sa majesté, et avec leur* DÉPENDANCE *de la couronne et parlement de la grande Bretagne.* entend-on, par cette condition exprimée en termes aussi généraux, pouvoir les priver d'une partie de ces propriétés, droits et priviléges ? cela n'est pas vraisemblable, puisque le tout leur est assuré, *sans une condition pareille,* du moment qu'ils sont devenu Sujets Britanniques. cependant de la laisser subsister sans necessité, seroit les exposer a mille troubles et chicanes qui en decouteroient, et a leur ruine certaine par les frais qu'ils leur occasionneroient.

Si au contraire quelques parties de ces propriétés droits et priviléges se trouvent etre incompatibles avec cette clause, il convient de les déterminer fixément dans l'acte, et d'ordonner une indemnité equivalente a chaque objet Supprimé Comme incompatible avec la ditte condition.

2° il est dit que, dans toute matiere de démeslé relatif a la propriété et droits civils d'aucun des sujets de sa Majesté canadiens ou anglois, on aura recours aux loix du Canada &c. Et que *les Jugemens des cours établies dans la province seront rendus conformément a ces loix, et* AUX DIVERSES ORDONNANCES *qui de tems en tems seront passé par le gouverneur &c &c.*- le gouverneur aura-t-il le droit de faire des ordonnances, qui anéantissent les loix fondamentales du Canada ? ou même qui, sans les anéantir, pourroient y porter quelques confusions capables de rendre incertains l'un ou l'autre de ces deux objects capitaux, et d'occasionner par milles chicanes qu'elles introduiroient la ruine assurée des citoïens, qu'opereroient les frais qui les accompagneroient ? ou bien sera t-il borné a ne pouvoir faire que quelques réglemens de police, toujours parfaitement d'accord avec les lois fondamentales du païs, sans pouvoir jamais s'eloigner de l'esprit de ces loix : tel que le pouvoient le gouverneur général et Intendant de police au d^t païs, pour les réglemens de moindre conséquence ; et ces deux joints au conseil supérieur, pour ceux de plus grande importance. (QUI ETOIT LE SEUL DROIT QUI FUT ACCORDÉ A CES PUISSANCES *sous le gouvernement françois ?* Si le pouvoir exprimé dans le premier cas est accordé a ce gouverneur, que deviendront les loix premieres du Canada, que le peuple désire et demande avec tant d'ardeur, les regardant comme sa sureté unique ? que deviendra l'existence entiere des Canadiens qui s'y trouve indispensablement attachée ? quel fruit retireront ils alors de ces loix, qu'on prétend leur accorder comme grace la plus spéciale, et qui pourront leur etre supprimée l'instant suivant ? quelles ressources auront-ils pour se faire rendre Justice sur les promesses qu'on leur a fait, qui seules les ont déterminé a se rendre d'abord, et ensuite a se fixer généralement sous l'obeissance Britannique ? un objet aussi important merite certainement la plus grande attention, et exige que le pouvoir soit limité en sorte qu'il ne puisse troubler un seul de ces sujets, de quelque maniere que ce soit, dans aucunes parties de leur propriétés droits et priviléges.[2]

3° le Bill semble vouloir exprimer que c'est en grande partie, pour complaire au désir des Canadiens, qu'on supprime dans leur païs toutes loix et manieres de procéder pour le criminel a la françoise, et qu'on y substitue toutes les loix criminelles angloises et manieres de procéder en conséquence. ce que je puis annoncer pour certain est que, dans la demande qu'ils font de leur loix, il n'est nullement question d'en excepter celles qui regardent le criminel ; et ils n'auroient pas manqué de l'exprimer, s'ils eussent pré-

[1] Canadian Archives, M 385, p. 385. This criticism of several important features of the Quebec Bill was made while the measure was passing through the Commons, and after M. De Lotbiniere had given his evidence before the House. (See Cavendish's Debates, p. 161.) It expresses the views of a representative member of the French-Canadian Noblesse,—views which were frequently expressed in various forms during the period of legal and political confusion which followed the Quebec Act, especially from 1784 to 1791.

[2] See further discussion of the points here raised, in M. De Lotbiniere's expression of his views to Maseres, about this time : "Account of the Proceedings" &c. p. 175.

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féré la loy angloise pour cette partie. on doit sentir que les loix civiles et les loix criminelles, etant formeés et lieés intimement l'une a l'autre par un même systhème, elles sont pour s'entreaider et s'appuïer réciproquement dans nombre de cas importans ; qu'on ne sauroit conséquemment, de ce mélange de loix calculées sur des systhémes differens, espérer cette harmonie qui fait la baze de la sureté et tranquilité publique ; et qu'elles doivent nécessairement s'entre choquer et s'affoiblir l'une l'autre d'instant en instant. d'ailleurs le Canadien connoit la loy criminelle qui a été suivie des le principe dans son pais ; il ne connoitra peut etre jamais en entier celle qu'on y veut substituer, et est-il un Etat plus cruel pour l'homme qui pense, que de ne jamais savoir s'il est digne de louange ou de blame ?—il a cru s'appercevoir aussi que, par la loy angloise, il pouvoit etre regardé comme criminel, sur le simple serment d'un homme, sans qu'il y eut corps de délit ou crime démontré, qu'il pouvoit, par cela seul, etre poursuivi et puni en conséquence, S'il ne peut parvenir a prouver *l'alibi ;* et l'accusateur peut aisément lui ôter cette ressource, pour peu qu'il l'ait observé quelque tems avant : danger le plus funeste qu'il soit même possible de se représenter, auquel le Canadien est certain de n'étre jamais exposé par la loy françoise—quant a l'instruction du procés, et aux preuves exigées pour Établir son crime et lui en faire subir la peine, il sait que dans la maniere de procéder a la françoise les précautions les plus minutieuses sont observées avec le plus grand scrupule, et qu'il ne peut etre condamné que sur des preuves aussi claires que le jour. il ne reste donc a citer à l'avantage du criminel anglois, que *de se voir condamner par douze jurés que l'on nomme* SES PAIRES. pense-t-on que le Canadien, ou tout autre qui voudra se dépouiller des préjugés de l'enfance, se croira exposé a plus de partialité, a plus d'injustice, a moins de lumiere etant jugé par une Cour composée de douze juges choisis dans la classe des plus honnetes-gens de la province, tous au fait de la loy *(tel le qu'etoit composé le conseil supérieur de ce païs sous le gouvernement françois, et qu'on ne peut se dispenser de rétablir si l'on y veut assurer la vie. l'etat, et la fortune des citoiens.)* croit-on, dis-je, qu'il se croira moins bien jugé par un conseil pareil, que s'il l'etoit pay douze jurés pris au hazard, qui même quelque fois auroit pu etre menagés de loin ? au reste on ne voit aucun inconvenient à accorder ces Jurés a ceux qui les préfereroient.

4° le gouverneur &c paroit également authorisé par le bill a changer a volonté cette loy criminelle, avec pouvoir de créer de nouveaux crimes accompagnés des peines qu'il jugera a propos, d'y imposer ; *lesquelles loix seront en force dez le moment de leur création*, sans avoir besoin de l'approbation de Sa majesté, POURVU QU'ELLES NE TOUCHENT POINT A LA RELIGION, *et que les peines imposées se reduisent a un emprisonnement de trois mois*, ou UNE AMANDE. Voici un pouvoir bien exhorbitant accordé a ce gouverneur &c ; qui, s'il est assez a droit pour faire passer ses loix au conseil privé, acquiert par là le droit de vie et de mort surtous ceux qui se trouveront résider dans le païs immense du Canada ; et qui, sans ce secour, peut les tenir emprisonnés l'espace de trois mois pour les moindres fautes, *ou même pour la* VIE, SI L'AMANDE (qui n'a point de terme limité) *est imposée de maniere que les délinquans ne puissent y satisfaire.*

Ceci mérite je le crois la plus grande attention ; au moins assez, pour que le plus grand nombre des habitans de la province soit préservé d'etre emprisonnés pour la vie, faute de pouvoir satisfaire aux amandes qui pourroient leur etre imposées.

5° Pour ce qui est du pouvoir législatif a établir en Canada, j'ai desja eu occasion, d'exposer a l'honorable chambre combien il etoit essentiel de ne le confier qu'aux plus gros propriétaires de *terres* dans ce païs :[1] seules propriétés reconnu pour solides dans quelque partie du monde que ce soit, toutes autres pouvant etre anéanties par le premier coup de feu ou quelques banqueroutes. on ne doit espérer que de ceux là l'attention et les soins nécessaires pour prévenir le mal, et procurer tous les avantages dont le païs peut etre susceptible, puis qu'ils sont les premiers et les plus interressés au bien de la chose : ce que l'on ne peut raisonnablement attendre de ceux qui n'ont aucun interet, ou de tres foibles, dans l'intéret publique ; a plus forte raison, si leurs interets particuliers s'y trouvent opposés—ainsi, quelle que soit la forme de législation a établir en

[1] See his examination before the House of Commons on June 3rd. Cavendish's Debates on the Quebec Bill, p. 161.

canada, il convient que Sa majesté soit supplieé de n'emploïer pour membres de législation que ceux de cette classe de premiers et plus gros propriétaires en fonds de terre, sans faire attention a la religion qu'ils professent ; leur différence d'opinions en fait de dogme n'influera en rien sur cet objet ; ce ne sera jamais que l'intéret qu'ils y auront qui les déterminera—qu'elle soit egalement supplié d'ordonner qu'il ne soit passé aucune loy, ordonnances, ou réglement de quelque importance, que dans le tems fixé pour la tenue génerale du corps législatif ; et que, dans tous les cas, les membres de ce corps soïent assemblés en assez grand nombre pour s'assurer que le seul bien publique les decidera.

6° Enfin un point qui merite attention et qui doit etre fixé, est que la langue françoise etant générale et presque l'unique en Canada, que tout etranger qui y irent, n'aient que ses interets en vue, il est demontré qu'il ne peut les bien servir qu'autant qu'il s'est fortifié dans cette langue, et qu'il est forcé d'en faire un usage continuel dans toutes les affaires particulieres qu'il y traitte ; qu'il est de plus impossible, vû la distribution des etablissemens et habitations du pais, de pretendre ay introduire jamais la langue angloise comme générale—pour toutes ces raisons et autres non détaillées, il est indispensables d'ordonner que cette langue françoise soit la seule emploiée dans tout ce qui se traitera et sera arrété pour toute affaire publique, tant dans les cours de justice, que dans l'assemblée du corps legislatif &c. car il paroitroit cruel que, sans nécessité, l'on voulut réduire presque la totalité des intérressés a n'etre jamais au fait de ce qui seroit agité ou seroit arrêté dans le pais.

CHARTIER DE LOTBINIERE
tant en son nom, qu'au
nom des Canadiens.

Translation.

THINGS WHICH MUST OF NECESSITY BE CONSIDERED AND DEFINITELY SETTLED IF THE BILL PRESENTED FOR THE PROVINCE OF QUEBEC IS PASSED.

1st Properties of every description, rights and privileges are granted to Canadians, in so far, it is stated, as may be in accordance with their allegiance to His Majesty, and with their dependence on the crown and parliament of Great Britain. Are we to understand by this condition, which is expressed in such general terms, that they can be deprived of a part of these properties rights and privileges? That is not likely, since all these are guaranteed to them, without any similar condition, from the moment that they become British Subjects. Nevertheless to allow it to continue unnecessarily, would be exposing those who are compelled to pay the costs to a thousand troubles and lawsuits, and to certain ruin from the expense which they would bring upon them.

If on the contrary some parts of the properties, rights and privileges are found to be incompatible with this clause, it is imperative that they should be definitely settled in the act, and that an indemnity should be allotted equivalent to every article Suppressed as incompatible with the said condition.

2d It is stated that in every matter of dispute, relating to the property and civil rights of any of his Majesty's Canadian or English subjects recourse should be had to the laws of Canada &c., And that the Judgments of the Courts established in the province shall be determined agreeably to the said laws, and to the different ordinances which shall from time to time be passed by the governor, &c. &c.—shall the governor have the right to make statutes which might annul the fundamental laws of Canada? or even which, without annulling them, would give rise to confusion which might serve to obscure one or other of these two important points, and by the multitude of lawsuits which they would entail, bring about the certain ruin of the citizens, who would have to bear the expenses accompanying them. Should his process not rather be restricted to only making police regulations, and that strictly in accordance with the fundamental laws of the country without even being able to step outside the spirit of

these laws, such as the governor general and the Intendant of police were able to make in the aforesaid country for regulations of minor importance, and these two were in combination with the superior council for matters of greater importance. (This was the only right granted to these authorities under the French Government.) If the power mentioned in the first case is granted to the governor, what will become of the first laws of Canada, which the people desire and ask for with so much energy, looking upon them as their only safeguard? What will become of the whole existence of the Canadians, which is so closely bound up with them? What advantage will they derive from these laws, which they claim are granted them as a very special favour, and which may be taken away from them at any moment? What power will they have to compel the administration of Justice by the fulfilment of the promises which have been made to them, which alone have decided them to submit in the first place, and afterwards to settle down in general under British rule? So important a subject certainly deserves the greatest consideration, and demands that authority should be restricted in such a way that it cannot disturb one of these subjects, in any manner whatever, in any part of their possessions, rights or privileges.

3d It seems intended to show by the Bill, that it is in great measure to satisfy the desire of the Canadians, that all French laws and modes of procedure against criminals are to be suppressed in this country, and that the English laws and modes of procedure are consequently to be substituted. What I can state as positively certain is that in the request they are making for their own laws, there is no question of excepting such of them as relate to criminals; and they would not have failed to express their opinion if they had preferred the English law on this point. They must feel that the civil code and the criminal code, being framed under the same system and intimately connected with each other are intended to mutually assist and strengthen each other in many important cases; and that in consequence it is not to be expected from this admixture of laws framed on different systems, that harmony which forms the basis of security and public tranquility; and that they must necessarily conflict with each other and weaken each other from time to time. Besides the Canadian understands the criminal law which has been followed from the beginning in his country; he will not perhaps fully understand the law which it is sought to substitute for it, and is there a more painful situation for the thoughtful man, than never to know whether he is worthy of praise or blame. He believes too that he can see a danger, under the English law, of his being looked upon as a criminal, on the bare oath of a man, without any offence or crime being proved. That he may, for this cause only be prosecuted and punished in consequence, if he cannot succeed in proving an alibi; and the accuser can easily deprive him of this resource, however little he may have watched him for some time past. This is the most fearful danger that it is possible to imagine, and one to which the Canadian is certain never to be exposed under the French law. As to the evidence during trial, and the proofs required to establish his guilt, and to subject him to the penalty for it, he knows that by the mode of procedure according to the French laws, the minutest precautions are most scrupulously observed, and that he can only be condemned on proofs as clear as the day. There remains then nothing else to cite to the advantage of the English criminal, except the satisfaction of being condemned by twelve jurors, who are called his peers. Is it credible that the Canadian, or anyone else who wished to divest himself of the prejudices of his childhood, would believe that he would be exposed to more favouritism, to more injustice, and to less enlightenment, if he were judged by a Court composed of twelve judges chosen from the class of t e most honourable men in the province all thoroughly acquainted with the law (such as formed the superior council of this country under the French government, and which it is absolutely imperative to reestablish, if it is desired to insure the life, the property, and the fortune of the citizen.) Is it credible, I say, that he would imagine himself less well judged by such a council, than if he were judged by twelve Jurors taken at haphazard, who might sometimes even have to be brought from a distance. At any rate, there seems to be no objection to granting these Jurors to those who prefer them.

4th The governor &c. seems also to be authorized by the bill to change the criminal aw at will, with authority to create new crimes accompanied by penalties which he

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shall judge proper to impose; which laws will be in force from the moment of their creation, without any need of His Majesty's approval, provided that they are not touching Religion, and that the punishments inflicted shall be limited to imprisonment for three months, or to a fine. This is a most preposterous power to be granted to a governor &c., who, if he is clever enough to get the laws passed by the privy council, acquires thereby the right of life and death over all those who shall be living in the immense country of Canada; and who, even without this reinforcement, may keep them imprisoned for the space of three months for the smallest faults, or even for life, if the penalty (which has no fixed limit) is imposed in such a way that the delinquent cannot pay it.

I consider that this point deserves the greatest attention, or at least enough to preserve the greater number of the inhabitants of the province from being imprisoned for life, for lack of ability to pay the penalties which may be imposed upon them.

5th With regard to the establishment of the legislative power in Canada, I have already had occasion to demonstrate to the honourable chamber how essential it was to entrust it only to the largest landed proprietors in this country; owners only of properties recognized all over the world as solid, any others being liable to ruin from a sudden fire, or a few bankruptcies. It is from them only we can hope for the attention and care necessary to foresee the evil, and to develop all the natural advantages which the country may possess, seeing that they are the most prominent and the most interested in the success of the matter: this cannot reasonably be expected from those who have no interest, or only a very slight one in the public good, and especially if their personal interests are opposed to public ones. Thus, whatever form of legislation is to be established in Canada, it would be well that His Majesty should be implored to employ as members of the legislature, only those taken from the class of the principal and larger proprietors in the matter of land, without paying any attention to the religion which they profess: their differences of opinion in point of dogma will have no influence on this object, it will never be anything but the interest they themselves have there, which will decide them. He should also be entreated to order that no law, ordinance, or regulation of any importance be passed, except at the time fixed for the general session of the legislative corps, and that in every case, the members of the corps should be assembled in large enough numbers to insure that it will be the public good only that will decide them.

And lastly, one point which deserves attention, and which ought to be settled, is that, the French language being the general, and indeed almost the only language used in Canada, it is obvious that no stranger, who goes there, having only his own interests at heart, can serve them well, except as he is thoroughly versed in this language, and obliged to make use of it continually in all the special matters which he has in hand; that it is completely impossible taking into account the distance between the establishments and dwellings throughout the country, ever to attempt to introduce the English language generally; for all these reasons, and others not here specified, it is indispensable that the French language should be ordered to be the only one employed in everything which deals with, and shall be settled as a public business whether in the courts of justice or in the assembly of the legislative corps &c., for it would be a cruel thing to attempt to reduce unnecessarily almost all those interested in public affairs to the condition of never being acquainted henceforth with what shall be discussed or decided throughout the country.

CHARTIER DE LOTBINIERE
both in his own name as
well as in the name of
the Canadians.

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QUERIES RE GOVERNMENT OF QUEBEC.[1]

QUERIES relative to the Government of Quebec for Consideration in case the Bill passes in its present shape.

Limits

The Line between Quebec and New York has not been continued further to the South West than Windmill Point, on Lake Champlain in Latitude 45.

Q. How is it to be settled with regard to these two Provinces between that station Point and the Boundary Line of Pensylvania?

General Government & Courts of Justice.

Q. What is to be the number of the Council? In what Proportion are the Canadians to be admitted into that and other Offices, and under what Test?

Q. What Courts of Criminal and Civil Justice are to be established either generally for the Province at large, or separately for its subordinate Dependencies. Whether by Ordinance of the Legislative Council, by Commissions from the King, or by Commissions from the Governor?

Who are to be the Puisne Judges in such Courts? Are any, or if any, what number of Canadians to be appointed Judges? and under what Qualifications.

Of what other Offices is the Civil Establishment for the Province of Quebec and for its Dependencies to consist, and how are they to be appointed and paid?

Is the office of Provost Marshal to be revived, or are Sheriffs to be substituted in the place of it?

If the latter is to take place, what compensation is to be made to the present Provost Marshal, or to any other Patent Officer, whose Office shall happen to be discontinued?

In what manner is a Revenue to be established, and how appropriated & applied?

Religion

What Provision is to be made for the Protestant Churches in Canada?

What number of Ministers are to be appointed, and with what Stipend?

Where are they to reside, and are any of the Churches already established to be appropriated to the Use of the Protestants, or others to be erected?

If the latter what Fund will there be to defray such Expences?

Are all the Religious Orders and Communities of the Church of Rome, at present existing in Quebec, to be abolished? or which, if any of them, are to be continued, & under what Restrictions or Regulations.

[1] Canadian Archives, M 385, p. 332. These "Queries" were evidently framed before the Bill had assumed its final form. The section with reference to "Limits" was provided for by the preamble adopted in the Commons. The number of Councillors was fixed at not less than 17 nor more than 23. The number of Canadians to be admitted to the Council was not dealt with, but the oath to be taken by the Roman Catholic members was prescribed. The question of the revenue was dealt with in the Quebec Revenue Act which follows the Quebec Act; see p. 406. Most of the other matters under the head of "Religion, Government, and Courts of Justice," are left for future consideration, some of them being covered in the Instructions to the Governor. John Pownall, one of the Under Secretaries of State for the Colonies, in a note to Lord Dartmouth of July 17th, 1774, has the following paragraph, "Gen[l] Carleton is gone; he recommends himself to your Lordships protection & requests your attention to the few memorandums & to the list of Persons recommended for Councillors which I have the honour to enclose" M. 385, p. 425. In quite another place we come upon a few notes endorsed "Gen[l] Carleton's Memoranda;" the chief item in which has reference to the subject of religion as indicated in these "Queries." "Gen[l] Carleton wishes that on the head of ecclesiastical arrangements, he may be left as much to himself as possible—he has no objection to having every Idea and proposition of Government in regard thereto suggested in his Instructions; but he disapproves the supression of any religious Communities except the Jesuits, and begs he may be left at liberty to use his own discretion in this very delicate business." M 384, p. 329.

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If any are to be abolished is the Suppression to take effect immediately, or are they to cease when the present members of such Communities are deceased, and what is to become of the Estates & Revenues of such of the religious orders and Communities as are to be discontinued.

Are the secular Clergy to have any Episcopal or Vicarial Superintendance over them? If so, by what Authority, & under what Limitations and Restrictions in such Episcopal or vicarial Power to be established?

Is the Patronage of vacant Benefices to be delegated to the Governor, or in what other manner exercised, or by whom enjoyed, and how are the Clergy to be appointed?

Lastly, How are these and the many other essential Reforms and Regulations touching Ecclesiastical matters, and also the necessary arrangements touching Commerce, Revenue, Courts of Justice, and other Civil Establishments to be provided for? If by Ordinances of the Legislative Council, (which seems the most reasonable) ought not the Governor and Chief Justice to be directed immediately to prepare, with proper assistance, Drafts of such Bills as will be requisite for those Objects under the following general Heads.

Vizt.

1. A Bill for establishing Courts of Justice, & regulating their Proceedings.
2. A Bill for the better regulation of the Ecclesiastical Affairs of Quebec.
3. A Bill for regulating the Trade with the Indians, and preventing unlawful Settlements in the Interior Country.
4. A Bill for regulating the Fisheries on the Coast of Labrador.
5. A Bill for the more effectual Administration of Justice and Government in the several subordinate Distrits in the interior Country.

THE QUEBEC ACT.[1]

Anno Decimo Quarto

GEORGII III. REGIS.

Cap. LXXXIII.

An Act for making more effectual Provision for the Government of the Province of *Quebec* in *North America*.

Preamble. Whereas His Majesty, by His Royal Proclamation, bearing Date the Seventh Day of *October*, in the Third Year of His Reign, thought fit to declare the Provisions which had been made in respect to certain Countries, Territories, and Islands in *America*, ceded to His Majesty by the definitive Treaty of Peace, concluded at *Paris* on the Tenth Day of *February*, One thousand seven hundred and sixty-three: And whereas, by the Arrangements made by the said Royal Proclamation, a very large Extent of Country, within which there were several Colonies and Settlements of the Subjects of *France*, who claimed to remain therein under the Faith of the said Treaty, was left, without any Provision being made for the Administration of Civil Government therein; and certain Parts of the Territory of *Canada*, where sedentary Fisheries had been established and carried on by the Subjects of *France*, Inhabitants of the said Province of *Canada*, under Grants and Concessions from the Government thereof, were annexed to the Government of *Newfoundland*, and thereby subjected to Regulations inconsistent with the Nature of such Fisheries: May it therefore please Your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by

[1] The text of the Act is taken from the original folio black letter form in which it was first issued by the King's Printers. "London: Printed by Charles Eyre and William Strachan, Printers to the King's Most Excellent Majesty. MDCCLXXIV."

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and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all the Territories, Islands, and Countries in *North America*, belonging to the Crown of *Great Britain*, bounded on the South by a Line from the Bay of *Chaleurs*, along the High Lands which divide the Rivers that empty themselves into the River *Saint Lawrence* from those which fall into the Sea, to a Point in Forty-five Degrees of Northern Latitude, on the Eastern Bank of the River *Connecticut*, keeping the same Latitude directly West, through the Lake *Champlain*, until, in the same Latitude, it meets the River *Saint Lawrence*; from thence up the Eastern Bank of the said River to the Lake *Ontario*; thence through the Lake *Ontario*, and the River commonly called *Niagara*; and thence along by the Eastern and South-eastern Bank of Lake *Erie*, following the said Bank, until the same shall be intersected by the Northern Boundary, granted by the Charter of the Province of *Pensylvania*, in case the same shall be so intersected; and from thence along the said Northern and Western Boundaries of the said Province, until the said Western Boundary strike the *Ohio*: But in case the said Bank of the said Lake shall not be found to be so intersected, then following the said Bank until it shall arrive at that Point of the said Bank which shall be nearest to the North-western Angle of the said Province of *Pensylvania*, and thence, by a right Line, to the said North-western Angle of the said Province; and thence along the Western Boundary of the said Province, until it strike the River *Ohio*; and along the Bank of the said River, Westward, to the Banks of the *Mississippi*, and Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of *England*, trading to *Hudson's Bay*; and also all such Territories, Islands, and Countries, which have, since the Tenth of *February*, One thousand seven hundred and sixty-three, been made Part of the Government of *Newfoundland*, be, and they are hereby, during His Majesty's Pleasure, annexed to, and made Part and Parcel of, the Province of *Quebec*, as created and established by the said Royal Proclamation of the Seventh of *October*, One thousand seven hundred and sixty-three.

[Margin: The Territories, Islands, and Countries, in North America, belonging to Great Britain, annexed to the Province of Quebec.]

Provided always, That nothing herein contained, relative to the Boundary of the Province of *Quebec*, shall in anywise affect the Boundaries of any other Colony.

[Margin: Not to affect the Boundaries of any other Colony]

Provided always, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to make void, or to vary or alter any Right, Title, or Possession, derived under any Grant, Conveyance, or otherwise howsoever, of or to any Lands within the said Province, or the Provinces thereto adjoining; but that the same shall remain and be in Force, and have Effect, as if this Act had never been made.

[Margin: nor to make void other Rights formerly granted]

And whereas the Provisions, made by the said Proclamation, in respect to the Civil Government of the said Province of *Quebec* and the Powers and Authorities given to the Governor and other Civil Officers of the said Province, by the Grants and Commissions issued in consequence thereof, have been found, upon Experience, to be inapplicable to the State and Circumstances of the said Province, the Inhabitants whereof amounted, at the Conquest, to above Sixty-five thousand Persons professing the Religion of the Church of *Rome*, and enjoying an established Form of Constitution and System of Laws, by which their Persons and Property had been protected, governed, and ordered, for a long Series of Years, from the First Establishment of the said Province of *Canada*; be it therefore further enacted by the Authority aforesaid, That the said Proclamation, so far as the same relates to the said Province of *Quebec*, and the Commission under the Authority whereof the Government of the said Province is at present

[Margin: Former Provisions made for the Province to be null and void after May 1, 1775.]

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administered, and all and every the Ordinance and Ordinances made by the Governor and Council of *Quebec* for the Time being, relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void, from and after the First Day of *May*, One thousand seven hundred and seventy-five.

Inhabitants of *Quebec* may profess the *Romish* Religion, subject to the King's Supremacy, as by Act I *Eliz.*; and the Clergy enjoy their accustomed Dues.

And, for the more perfect Security and Ease of the Minds of the Inhabitants of the said Province, it is hereby declared, That His Majesty's Subjects, professing the Religion of the Church of *Rome* of and in the said Province of *Quebec*, may have, hold, and enjoy, the free Exercise of the Religion of the Church of *Rome*, subject to the King's Supremacy, declared and established by an Act, made in the First Year of the Reign of Queen *Elizabeth*, over all the Dominions and Countries which then did, or thereafter should belong, to the Imperial Crown of this Realm; and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights, with respect to such Persons only as shall profess the said Religion.

Provision may be made by His Majesty for the Support of the Protestant Clergy.

Provided nevertheless, That it shall be lawful for His Majesty, His Heirs or Successors, to make such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they shall, from Time to Time, think necessary and expedient.

No Person professing the *Romish* Religion obliged to take the Oath of I *Eliz.*; but to take, before the Governor, &c., the following Oath.

Provided always, and be it enacted, That no Person, professing the Religion of the Church of *Rome*, and residing in the said Province, shall be obliged to take the Oath required by the said Statute passed in the First Year of the Reign of Queen *Elizabeth*, or any other Oaths substituted by any other Act in the Place thereof; but that every such Person who, by the said Statute is required to take the Oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following Oath before the Governor, or such other Person in such Court of Record as His Majesty shall appoint, who are hereby authorised to administer the same; *videlicet*,

The Oath.

I A. B. *do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His Majesty King* GEORGE, *and him will defend to the utmost of my Power, against all traiterous Conspiracies, and Attempts whatsoever, which shall be made against His Person, Crown and Dignity; and I will do my utmost Endeavour to disclose and make known to His Majesty, His Heirs and Successors, all Treasons, and traiterous Conspiracies, and Attempts, which I shall know to be against Him, or any of Them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Power or Person whomsoever to the Contrary.*

So Help Me GOD.

Persons refusing the Oath to be subject to the Penalties by Act I *Eliz.*

And every such Person, who shall neglect or refuse to take the said Oath before mentioned, shall incur and be liable to the same Penalties, Forfeitures, Disabilities, and Incapacities, as he would have incurred and been liable to for neglecting or refusing to take the Oath required by the said Statute passed in the First Year of the Reign of Queen *Elizabeth*.

His Majesty's *Canadian* Subjects (religious Orders excepted) may hold all their Possessions, *etc.* and in Matters of Controversy, Resort to be had to

And be it further enacted by the Authority aforesaid, That all His Majesty's *Canadian* Subjects, within the Province of *Quebec*, the religious Orders and Communities only excepted, may also hold and enjoy their Property and Possessions, together with all Customs and Usages relative thereto, and all other their Civil Rights, in as large, ample, and beneficial Manner, as if the said Proclamation, Commissions, Ordinances, and other Acts and Instruments, had not been made, and as may consist with their Allegiance to His Majesty, and Subjection to the Crown and Parliament

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the Laws of *Canada* for the Decision.

of *Great Britain*; and that in all Matters of Controversy, relative to Property and Civil Rights, Resort shall be had to the Laws of *Canada*, as the Rule for the Decision of the same; and all Causes that shall hereafter be instituted in any of the Courts of Justice, to be appointed within and for the said Province, by His Majesty, His Heirs and Successors, shall, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of *Canada*, until they shall be varied or altered by any Ordinances, that shall, from Time to Time, be passed in the said Province by the Governor, Lieutenant Governor, or Commander in Chief, for the Time being, by and with the Advice and Consent of the Legislative Council of the same, to be appointed in Manner herein-after mentioned.

Not to extend to Lands granted by His Majesty in common Soccage.

Provided always, That nothing in this Act contained shall extend, or be construed to extend, to any Lands that have been granted by His Majesty, or shall hereafter be granted by His Majesty, His Heirs and Successors, to be holden in free and common Soccage.

Owners of Goods may alienate the same by Will, &c.

Provided also, That it shall and may be lawful to and for every Person that is Owner of any Lands, Goods, or Credits, in the said Province, and that has a Right to alienate the said Lands, Goods, or Credits, in his or her Life-time, by Deed of Sale, Gift, or otherwise, to devise or bequeath the same at his or her Death, by his or her last Will and Testament; any Law, Usage, or Custom, heretofore or now prevailing in the Province, to the Contrary hereof in any-wise notwithstanding; such Will being executed, either according to the Laws of Canada, or according to the Forms prescribed by the Laws of *England*.

if executed according to the Laws of *Canada*.

Criminal Law of *England* to be continued in the Province.

And whereas the Certainty and Lenity of the Criminal Law of *England*, and the Benefits and Advantages resulting from the Use of it, have been sensibly felt by the Inhabitants, from an Experience of more than Nine Years, during which it has been uniformly administered; be it therefore further enacted by the Authority aforesaid, That the same shall continue to be administered, and shall be observed as Law in the Province of *Quebec*, as well in the Description and Quality of the Offence as in the Method of Prosecution and Trial; and the Punishments and Forfeitures thereby inflicted to the Exclusion of every other Rule of Criminal Law, or Mode of Proceeding thereon, which did or might prevail in the said Province before the Year of our Lord One thousand seven hundred and sixty-four; any Thing in this Act to the Contrary thereof in any Respect notwithstanding; subject nevertheless to such Alterations and Amendments as the Governor, Lieutenant-governor, or Commander in Chief for the Time being, by and with the Advice and Consent of the legislative Council of the said Province, hereafter to be appointed, shall, from Time to Time, cause to be made therein, in Manner herein-after directed.

His Majesty may appoint a Council for the Affairs of the Province;

And whereas it may be necessary to ordain many Regulations for the future Welfare and good Government of the Province of *Quebec*, the Occasions of which cannot now be foreseen, nor, without much Delay and Inconvenience, be provided for, without intrusting that Authority, for a certain Time, and under proper Restrictions, to Persons resident there: And whereas it is at present inexpedient to call an Assembly; be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs and Successors, by Warrant under His or Their Signet or Sign Manual, and with the Advice of the Privy Council, to constitute and appoint a Council for the Affairs of the Province of *Quebec*, to consist of such Persons resident there, not exceeding Twenty-three, nor less than Seventeen, as His Majesty, His Heirs and Successors, shall be pleased to appoint; and, upon the Death, Removal, or Absence of any of the Members of the said Council, in like Manner to constitute and appoint such and so many other Person or Persons as shall be necessary to supply the Vacancy or Vacancies; which Council, so appointed and nominated, or the

which Council may make Ordinances, with Consent of the Governor.

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major Part thereof, shall have Power and Authority to make Ordinances for the Peace, Welfare, and good Government, of the said Province, with the Consent of His Majesty's Governor, or, in his Absence, of the Lieutenant-governor, or Commander in Chief for the Time being.

The Council are not impowered to lay Taxes, Publick Roads or Buildings excepted.

Provided always, That nothing in this Act contained shall extend to authorise or impower the said legislative Council to lay any Taxes or Duties within the said Province, such Rates and Taxes only excepted as the Inhabitants of any Town or District within the said Province may be authorised by the said Council to assess, levy, and apply, within the said Town or District, for the Purpose of making Roads, erecting and repairing publick Buildings, or for any other Purpose respecting the local Convenience and Oeconomy of such Town or District.

Ordinances made to be laid before His Majesty for His Approbation.

Provided also, and be it enacted by the Authority aforesaid, That every Ordinance so to be made, shall, within Six Months, be transmitted by the Governor, or, in his Absence, by the Lieutenant-governor, or Commander in Chief for the Time being, and laid before His Majesty for His Royal Approbation; and if His Majesty shall think fit to disallow thereof, the same shall cease and be void from the Time that His Majesty's Order in Council thereupon shall be promulgated at *Quebec*

Ordinances touching Religion not to be in Force without His Majesty's Approbation.

Provided also, that no Ordinance touching Religion, or by which any Punishment may be inflicted greater than Fine or Imprisonment for Three Months, shall be of any Force or Effect, until the same shall have received His Majesty's Approbation.

When Ordinances are to be passed by a Majority.

Provided also, That no Ordinance shall be passed at any Meeting of the Council where less than a Majority of the whole Council is present, or at any Time except between the First Day of *January* and the First Day of *May*, unless upon some urgent Occasion, in which Case every Member thereof resident at *Quebec*, or within Fifty Miles thereof, shall be personally summoned by the Governor, or, in his Absence, by the Lieutenant-governor, or Commander in Chief for the Time being, to attend the same.

Nothing to hinder His Majesty to constitute Courts of Criminal, Civil, and Ecclesiastical Jurisdiction.

And be it further enacted by the Authority aforesaid, That nothing herein contained shall extend, or be construed to extend, to prevent or hinder His Majesty, His Heirs and Successors, by His or Their Letters Patent under the Great Seal of *Great Britain*, from erecting, constituting, and appointing, such Courts of Criminal, Civil, and Ecclesiastical Jurisdiction within and for the said Province of *Quebec*, and appointing, from Time to Time, the Judges and Officers thereof, as His Majesty, His Heirs and Successors, shall think necessary and proper for the Circumstances of the said Province.

All Acts formerly made are hereby inforced within the Province.

Provided always, and it is hereby enacted, That nothing in this Act contained shall extend, or be construed to extend, to repeal or make void, within the said Province of *Quebec*, any Act or Acts of the Parliament of *Great Britain* heretofore made, for prohibiting, restraining, or regulating, the Trade or Commerce of His Majesty's Colonies and Plantations in *America*; but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said Colonies and Plantations, shall be, and are hereby declared to be, in Force, within the said Province of *Quebec*, and every Part thereof.

Finis.

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QUEBEC REVENUE ACT.[1]

ANNO DECIMO QUARTO

GEORGII III. REGIS.

CAP. LXXXVIII.

An Act to establish a Fund towards further defraying the Charges of the Administration of Justice, and Support of the Civil Government within the Province of *Quebec*, in *America*.

Preamble. Certain Duties imposed by His most Christian Majesty upon Rum, Brandy, *etc.* imported into *Quebec*,

WHEREAS certain Duties were imposed, by the Authority of His most Christian Majesty, upon Wine, Rum, Brandy, *Eau de Vie de Liqueur*, imported into the Province of *Canada*, now called the Province of *Quebec*, and also a Duty of Three Pounds *per Centum ad Valorem*, upon all dry Goods imported into, and exported from, the said Province, which Duties subsisted at the Time of the Surrender of the said Province to Your Majesty's Forces in the late War: And whereas it is expedient that the said Duties should cease and be discontinued; and that in Lieu and in Stead thereof, other Duties should be raised by the Authority of Parliament, for making a more adequate Provision for defraying the Charge of the Administration of Justice, and the Support of Civil Government in the said Province: We, Your Majesty's most dutiful and loyal Subjects, the Commons of *Great Britain*, in Parliament assembled, do most humbly beseech Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Fifth Day of *April*, One thousand seven hundred and seventy-five, all the Duties which were imposed upon Rum, Brandy, *Eau de Vie de Liqueur*, within the said Province, and also of Three Pounds *per Centum ad Valorem*, on dried Goods imported into, or exported from, the said Province, under the Authority of His most Christian Majesty, shall be, and are hereby discontinued; and that in Lieu and in Stead thereof, there shall, from and after the said Fifth Day of *April*, One thousand seven hundred and seventy-five, be raised, levied, collected, and paid, unto His Majesty, His Heirs and Successors, for and upon the respective Goods herein-after mentioned, which shall be imported or brought into any Part of the said Province, over and above all other Duties now payable in the said Province, by any Act or Acts of Parliament, the several Rates and Duties following; that is to say,

after *April 5*, 1775, to be discontinued within the Province,

and in Stead of which the following Duties to be paid to His Majesty.

The Rates.

For every Gallon of Brandy, or other Spirits, of the Manufacture of *Great Britain*, Three-pence.

For every Gallon of Rum, or other Spirits, which shall be imported or brought from any of His Majesty's Sugar Colonies in the *West Indies*, Sixpence.

For every Gallon of Rum, or other Spirits, which shall be imported or brought from any other of His Majesty's Colonies or Dominions in *America*, Nine-pence.

For every Gallon of Foreign Brandy, or other Spirits, of Foreign Manufacture, imported or brought from *Great Britain*, One Shilling.

For every Gallon of Rum, or Spirits, of the Produce or Manufacture of any of the Colonies or Plantations in *America*, not in the Possession or

[1] The text of this, as also of the following Act, is taken from the original folio black letter form in which it was first issued by the King's Printers, Eyre and Strachan.

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under the Dominion of His Majesty, imported from any other Place, except *Great Britain*, One Shilling.

For every Gallon of Molasses and Syrups, which shall be imported or brought into the said Province, in Ships or Vessels belonging to His Majesty's Subjects in *Great Britain* or *Ireland*, or to His Majesty's Subjects in the said Province, Three-pence.

For every Gallon of Molasses and Syrups, which shall be imported or brought into the said Province, in any other Ships or Vessels, in which the same may be legally imported, Sixpence; and after those Rates for any greater or less Quantity of such Goods respectively.

Rates deemed Sterling Money of *Great Britain*; And it is hereby further enacted by the Authority aforesaid, That the said Rates and Duties, charged by this Act, shall be deemed, and are hereby declared to be, Sterling Money of *Great Britain*, and shall be collected, recovered, and paid, to the Amount of the Value which such nominal Sums bear in *Great Britain*; and that such Monies may be received and taken according to the Proportion and Value of Five Shillings and Sixpence the Ounce in Silver; and that the said Duties, herein-before granted, shall be raised, levied, collected, paid, and recovered, in the same Manner and Form, and by such Rules, Ways, and Means, and under such Penalties and Forfeitures, except in such Cases where any Alteration is made by this Act, as any other Duties payable to His Majesty upon Goods imported into any *British* Colony or Plantation in *America* are or shall be raised, levied, collected, paid, and recovered, by any Act or Acts of Parliament, as fully and effectually, to all Intents and Purposes, as if the several Clauses, Powers, Directions, Penalties, and Forfeitures, relating thereto, were particularly repeated and again enacted in the Body of this present Act; and that all the Monies that shall arise by the said Duties, (except the necessary Charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same,) shall be paid by the Collector of His Majesty's Customs, into the Hands of His Majesty's Receiver-general in the said Province for the Time being, and shall be applied, in the first Place, in making a more certain and adequate Provision, towards defraying the Expences of the Administration of Justice, and of the Support of Civil Government, in the said Province; and that the Lord High Treasurer, or Commissioners of His Majesty's Treasury, or any Three or more of them for the Time being, shall be, and is or are hereby impowered, from Time to Time, by any Warrant or Warrants under his or their Hand or Hands, to cause such Money to be applied out of the said Produce of the said Duties, towards defraying the said Expences; and that the Residue of the said Duties shall remain and be reserved in the Hands of the said Receiver-general, for the future Disposition of Parliament.

(Margin notes: how they are to be levied, &c. — to whom they are to be paid, — and how to be applied.)

Regulations with respect to Goods brought into the Province chargeable with the Duties before mentioned. And it is hereby further enacted by the Authority aforesaid, That if any Goods chargeable with any of the said Duties herein-before mentioned shall be brought into the said Province by Land Carriage, the same shall pass and be carried through the Port of *Saint John's*, near the River *Sorrel*; or if such Goods shall be brought into the said Province by any inland Navigation, other than upon the River *Saint Lawrence*, the same shall pass and be carried upon the said River *Sorrel*, by the said Port, and shall be there entered with, and the said respective Rates and Duties paid for the same, to such Officer or Officers of His Majesty's Customs as shall be there appointed for that Purpose; and if any such Goods coming by Land Carriage or inland Navigation, as aforesaid, shall pass by or beyond the said Place, before named, without Entry or Payment of the said Rates and Duties, or shall be brought into any Part of the said Province, by or through any other Place whatsoever, the said Goods shall be forfeited; and every Person who shall be assisting, or otherwise concerned in the bringing or removing such Goods, or to whose Hands the same shall come, knowing that they were brought or removed contrary to this Act, shall forfeit Treble the Value

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of such Goods, to be estimated and computed according to the best Price that each respective Commodity bears in the Town of *Quebec*, at the Time such Offence shall be committed; and all the Horses, Cattle, Boats, Vessels, and other Carriages whatsoever, made use of in the Removal, Carriage, or Conveyance of such Goods, shall also be forfeited and lost, and shall and may be seized by any Officer of His Majesty's Customs, and prosecuted, as herein-after mentioned.

Penalties and Forfeitures where to be prosecuted for, *etc.*

And it is hereby further enacted by the Authority aforesaid, That the said Penalties and Forfeitures by this Act inflicted, shall be sued for and prosecuted in any Court of Admiralty, or Vice Admiralty, having Jurisdiction within the said Province, and the same shall and may be recovered and divided in the same Manner and Form, and by the same Rules and Regulations, in all Respects, as other Penalties and Forfeitures for Offences against the Laws relating to the Customs and Trade of His Majesty's Colonies in *America* shall or may, by any Act or Acts of Parliament be sued for, prosecuted, recovered, and divided.

Any Person keeping a House of publick Entertainment to pay 1 l. 16 s. for a Licence.

And be it further enacted by the Authority aforesaid, That there shall, from and after the Fifth Day of *April*, One thousand seven hundred and seventy-five, be raised, levied, collected, and paid, unto His Majesty's Receiver-general of the said Province, for the Use of His Majesty, His Heirs and Successors, a Duty of One Pound Sixteen Shillings, Sterling Money of *Great Britain*, for every Licence that shall be granted by the Governor, Lieutenant Governor, or Commander in Chief of the said Province, to any Person or Persons for keeping a House or any other Place of publick Entertainment, or for the retailing Wine, Brandy, Rum, or any other Spirituous Liquors, within the said Province; and any Person keeping any such House or Place of Entertainment, or retailing any such Liquors without such Licence, shall forfeit and pay the Sum of Ten Pounds for every such Offence, upon Conviction thereof; One Moiety to such Person as shall inform or prosecute for the same, and the other Moiety shall be paid into the Hands of the Receiver-general of the Province, for the Use of His Majesty.

Penalty of 10l. for every Offence.

Not to make void *French* Revenues, *etc.* reserved at the Conquest.

Provided always, That nothing herein contained shall extend, or be construed to extend, to discontinue, determine, or make void, any Part of the territorial or casual Revenues, Fines, Rents, or Profits whatsoever, which were reserved to, and belonged to, His most Christian Majesty, before and at the Time of the Conquest and Surrender thereof to His Majesty the King of *Great Britain*; but that the same, and every of them, shall remain and be continued to be levied, collected, and paid, in the same Manner as if this Act had never been made; any Thing therein contained to the Contrary notwithstanding.

In Suits brought pursuant to this Act,

And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be commenced against any Person or Persons for any Thing done in pursuance of this Act, and if it shall appear to the Court or Judge where or before whom the same shall be tried, that such Action or Suit is brought for any Thing that was done in pursuance of and by the Authority of this Act, the Defendant or Defendants shall be indemnified and acquitted for the same; and if such Defendant or Defendants shall be so acquitted; or if the Plaintiff shall discontinue such Action or Suit, such Court or Judge shall award to the Defendant or Defendants Treble Costs.

Defendants to have Treble Costs.

Finis.

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ANNO DECIMO QUINTO

GEORGII III. REGIS.

CAP. XL.

An Act for amending and explaining an Act, passed in the Fourteenth Year of His Majesty's Reign, intituled, *An Act to establish a Fund towards further defraying the Charges of the Administration of Justice, and Support of the Civil Government within the Province of* Quebec, *in* America.

Preamble. Clause in Act 14 *Geo. III.* recited.

WHEREAS by an Act, passed in the Fourteenth Year of His Majesty's Reign, (intituled, *An Act to establish a Fund towards further defraying the Charges of the Administration of Justice, and Support of the Civil Government within the Province of* Quebec, *in* America,) it is, amongst other Things, enacted, That if any Goods, chargeable with any of the Duties in the said Act mentioned, shall be brought into the said Province by Land Carriage, the same shall pass and be carried through the Port of *Saint John's*, near the River *Sorrel*; or if such Goods shall be brought into the said Province by any Inland Navigation, other than upon the River *Saint Lawrence*, the same shall pass and be carried upon the said River *Sorrel* by the said Port, and shall be there entered with and the said respective Rates and Duties paid for the same, to such Officer or Officers of His Majesty's Customs as shall be there appointed for that Purpose; and if any such Goods coming by Land Carriage or Inland Navigation as aforesaid, shall pass by or beyond the said Place before named without Entry or Payment of the said Rates and Duties, or shall be brought into any Part of the said Province by or through any other Place whatsoever, the said Goods shall be forfeited; and every Person who shall be assisting, or otherwise concerned, in the bringing or removing such Goods, or to whose Hands the same shall come, knowing that they were brought or removed contrary to this Act, shall forfeit Treble the Value of such Goods; to be estimated and computed according to the best Price that each respective Commodity bears in the Town of *Quebec* at the Time such Offence shall be committed; and all the Horses, Cattle, Boats, Vessels, and other Carriages whatsoever, made use of in the Removal, Carriage, or Conveyance of such Goods, shall be forfeited and lost, and shall and may be seized by any Officer of His Majesty's Customs, and prosecuted as therein-after mentioned: And whereas there is Reason to apprehend, that the Regulations and Restrictions contained in the said herein-before recited Clause, so far as they relate to the bringing of Rum, Brandy, or other Spirits, into the Province of *Quebec* by Land Carriage, may, without further Explanation, operate to the Prejudice and Disadvantage of the Commerce carried on with the *Indians* in the upper or interior Parts of the said Province, we, Your Majesty's most dutiful and loyal Subjects, the Commons of *Great Britain*, in Parliament assembled, do most humbly beseech Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful to and for all His Majesty's Subjects freely to bring, carry or convey, by Land Carriage, or Inland Navigation, into any Parts of the Province of *Quebec*, not heretofore comprehended within the Limits thereof by His Majesty's Royal Proclamation of the Seventh of *October*, One thousand seven hundred and sixty-three, any Quantity of Rum, Brandy, or other Spirits, any Thing contained in the before-recited Act of Parliament to the contrary thereof in any-wise notwithstanding.

His Majesty's Subjects may bring, by Land or Inland Navigation, into any Parts of *Quebec*, not heretofore comprehended in the Royal Proclamation of *Oct.* 7, 1763, any Quantity of Rum, Brandy, *etc.*

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CARLETON TO DARTMOUTH.[1]

(N°. 1.)
Duplicate. QUEBEC 23^{d} Sept^{r} 1774.

MY LORD!

I take the first Opportunity that offers of acquainting your Lordship with my Arrival here the 18th instant, where I have had the Satisfaction of finding His Majesty's Canadian Subjects impressed with the strongest sense of The King's great Goodness towards them in the late Act of Regulation for the Government of this Province; All Ranks of People amongst them vied with each other in testifying their Gratitude and Respect, and the Desire they have by every Mark of Duty and Submission to prove themselves not undeserving of the Treatment they have met with—

* * * * * * * *

I am with much Esteem and Respect
Your Lordship's
Most Obedient and
Most Humble Servant
GUY CARLETON

Earl of Dartmouth
One of His Majesty's
Principal Secretaries of State.

EXTRACT OF A LETTER FROM GENERAL GAGE TO GENERAL CARLETON DATED BOSTON SEPTR. 4TH. 1774.[2]

"The present Situation of Affairs in this Province obliges me to collect all the " Force in my Power; I have therefore sent Transports for the 10th and 52^{d} Regiments " to bring them to this Place, at the same Time I submit to you, whether you think any " Thing is to be dreaded from the Absence of these Corps, internally in the Province of " Quebec during the Winter; for as these Regiments will come down the River so late " in the Year, and may be replaced early in the Spring, I imagine no Danger can be " apprehended from without. If therefore you think the Fusileers at Quebec, and the " Part of the 26th at Montreal, with small Detachments from them at Trois Rivieres " and Chambli, can preserve Peace and good Order in the Province, I am to beg you " will order the 10th and 52^{d} Regiments to embark without Delay on board the Trans- " ports, for you will think with me they will have no Time to spare in coming down " the River St. Laurence.

"As I must look forward to the worst, from the apparent Disposition of the People " here, I am to ask your Opinion, whether a Body of Canadians and Indians might be " collected, and confided in, for the Service in this Country, should matters come to " Extremities; and on what Plan, and what Measures would be most efficacious to " raise them, and for them to form a Junction with the King's Forces in this Province?"

G. C.

Endorsed:—Extract of a Letter from
General Gage to General
Carleton dated Boston Sept^{r}
4th 1774.
In Governor Carleton's
of the 23rd Sept^{r} N° 1

[1] Canadian Archives, Q 10, p. 120. After the passing of the Quebec Act Carleton left early in July to resume his position as Governor of the enlarged Province of Quebec under its new constitution.

[2] Canadian Archives, Q 10, p. 122. This was sent as an enclosure with the previous despatch, and is one of numerous documents showing immediate preparation on the part of the English authorities, after the passing of the Quebec Act, to make use of the Canadians and Indians in connection with the colonial troubles to the south.

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EXTRACT OF GENERAL CARLETON'S ANSWER TO GENL GAGE

DATED QUEBEC 20TH SEPTR 1774.[1]

"Your Express reached this Place yesterday Evening, about twenty Hours after "my Arrival; Pilots are sent down the River, the 10th and 52nd shall be ready to "embark at a Moment's Notice, and as you directed"—

"The Canadians have testified to me the strongest marks of Joy, and Gratitude, "and Fidelity to the King, and to His Government, for the late Arrangements made "at Home in their Favor; a Canadian Regiment would compleat their Happiness, "which in Time of Need might be augmented to two, three, or more Battalions, tho' "for the Satisfaction of the Province, and 'till the Kings Service might require more, "one would be sufficient, and I am convinced their Fidelity and Zeal might be depended "on; should this Measure be at length adopted (which I have long since Recommended)[2] "'tis essentially necessary their Appointments should be the same as the rest of the "Infantry, with half pay, in Case they should be reduced; the Savages of this Province, "I hear, are in very good Humor, a Canadian Battalion would be a great Motive, and "go far to influence them, but you know what sort of People they are"—

G. C.

Endorsed:—Extract of General Carleton's
Answer to General Gage
dated Quebec 20th Septr 1774.
In Governor Carleton's
of the 23d Sepr. No 1

DARTMOUTH TO CARLETON.[3]

WHITEHALL 10th Decr 1774

GOVERNOR CARLETON

SIR,

I have received your Dispatch of the 23d of Septr acquainting me with your Arrival at Quebec. and that you found His Majesty's Canadian Subjects impressed with a just Sense of His Majestys Goodness to them, and highly satisfied and pleased with the Regulations adopted for the future Government of the Colony—

As you are silent as to the Sentiments of His Majesty's Natural born Subjects in Canada respecting the late Act, I am not at liberty to conclude that they entertain the same opinion of it, but the King trusts that when the Provisions of it have taken place and His Majesty's gracious Intentions with respect to the Plan of Judicature[4] that

[1] Canadian Archives, Q 10, p. 123. This was also enclosed in Carleton's despatch of 23rd Sept., 1774.

[2] See, among others, his letter to Gage of Feb. 15th, 1767; p. 195. Also his letter to Shelburne of Nov. 25th, 1767; p. 196.

[3] Canadian Archives, Q 10, p. 125.

[4] It was apparently intended to furnish an ordinance for the establishment of courts in Canada and send it out to be enacted by the Council. Two plans were proposed, as we learn from a paragraph in Under Secretary Pownall's note to Lord Dartmouth of July 17th, 1774. "I have also conversed with Mr. Hey on the Plan of judicature for Quebec he thinks my plan will do as well as his I am convinced his ought to be preferred; we both agree that anything that falls short of, goes beyond, or halts between either will be improper." M 385, p. 425. Of these only the one by Hey appears to have been actually drawn out, as we learn from Hey's letter to Dartmouth. "My Lord—I did myself the honour to call at your Lordships house with the draught of an Ordinance for establishing Courts of Justice at Quebec, and thro'-out the Province, which I most sincerely wish may have the good fortune to be better thought of by your Lordship than I will freely confess it is by the author of it—without any affectation of modesty which appears to me as bad as any other sort of affectation, I must own it is a work beyond my abilities & some how or other I have had the ill luck to have had very little assistance in it except from Mr. Jackson indeed not any. & He is at present much taken up with the business of the Court of Chancery." M 385, p. 490. The draught of an ordinance here referred to, is apparently the one given in the same volume, at p. 373, and endorsed, "Epitome of a proposed Ordinance for establishing Courts of Justice in the Province of Quebec." However, the troubles in America, including Canada, which soon followed the passing of the Quebec Act, arrested the execution of this arrangement, and when, in 1777, the first ordinances were passed in Quebec for the establishing of courts of civil and criminal jurisdiction, the plan was greatly modified from the earlier draught.

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is to be established are well known, prejudices which popular Clamour has excited, will cease, and that His Majesty's Subjects of every description will see and be convinced of the Equity and good Policy of the Bill.

It will be your Care, Sir, at the same time you express to the King's new adopted Subjects His Majesty's gracious approbation of the Affection and Respect they have shewn for His Government, to endeavour by every Argument which your own good sense will suggest to you, to persuade the natural born subjects of the justice & propriety of the present form of Government and of the attention that has been shewn to their Interests not only in the adoption of the English Laws, as far as it was consistent with what was due to the just Claims and moderate. Wishes of the Canadians, but in the opening to the British Merchant, by an Extension of the Province, so many new Channels of important Commerce.

You will have seen, by the public Prints, that Mr. Hey has been elected for Sandwich in the new Parliament and will naturally conclude that he has no Intention of returning to Quebec; but I have the Satisfaction to acquaint you, that is not the case, and that he is resolved to return to Quebec in the Character of Chief Justice although he should be under the necessity of relinquishing his Seat in Parliament which however we hope and think may be avoided, and I mention this with the greater Pleasure, knowing how great a satisfaction it must be to you to have his advice and opinion upon the many important Objects that remain to be provided for.[1]

It is very much to be wished that the season of the Year would admit of his being the Bearer of your Commission and Instructions, and of the Notifications of His Majesty's Pleasure with regard to the Variety of Arrangements which are to be made; but as that cannot be, I propose to send them to you by the next New York Packet under cover to Lieut. Gov^r Colden, with Directions to him to see them conveyed to you from New York by a proper Messenger and with all possible Dispatch.

I am &c^a

DARTMOUTH.

Endorsed:—Dra^t to Gov^r Carleton
10^th December 1774

CARLETON TO DARTMOUTH.[2]

(N^o. 3.)

QUEBEC 11^th November 1774.

MY LORD!—Soon after my Arrival here, I informed Your Lordship of the Gratefull Sense, The King's Canadian Subjects, in this Part of the Province entertained of the Acts of Parliament passed in their Favour during the last Session; those more remote have since, in all their Letters and Addresses, expressed the same Sentiments of Gratitude and Attachment to His Majesty's Royal Person and Government as well as to the British Interests.

The most respectable part of the English residing at this Place, notwithstanding many Letters received from Home, advising them to pursue a different Course, likewise presented an Address expressive of their Wish to see universal Harmony and a dutifull Submission to Government continue to be the Characteristic of the Inhabitants of this Province, and assuring me, that nothing should be wanting, upon their Parts, to promote so desirable an End; I believe, most of those, who signed this Address, were disposed to act up to their Declaration, which probably would have been followed by those, who did not, if their Brethren at Montreal had not adopted very different Measures.

Whether the Minds of the latter are of a more turbulent Turn, or that they caught the Fire from some Colonists settled among them, or in reality Letters were received from the General Congress, as reported, I know not; Certain it is however, that shortly after the said Congress had published in all the American Papers their approbation of the

[1] Wm. Hey returned to Canada as Chief Justice in April 1775.
[2] Canadian Archives, Q 11, p. 11.

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Suffolk County Resolves[1] in the Massachusets, a Report was spread at Montreal, that Letters of Importance had been received from the General Congress, all the British there flocked to the Coffee House to hear the News, Grievances were publicly talked of, and various Ways for obtaining Redress proposed, but that Government might not come to a true Knowledge of their Intentions, a Meeting was appointed at the House of a Person then absent, followed by several others at the same Place, and a Committee of four Named, consisting of Mr. Walker, Mr. Todd, Mr. Price, and Mr. Blake, to take Care of their Interests, and prepare Plans for Redress.

Mr. Walker, whose Warmth of Temper brought on him, some Time before my Appointment to this Command, the very cruel and every Way unjustifiable Revenge,[2] which made so much Noise, now takes the Lead, and is not unmindful of his Friend Mr. Maseres upon the Occasion.

Their Plans being prepared, and a Subscription commenced, the Committee set out for Quebec, attended in Form by their Secretary, a Nephew of Mr. Walker's, and by Profession a Lawyer; immediately upon their Arrival here, their Emissaries having prepared the Way, an Anonimous Summons was posted up in the Coffee House for all the British Subjects to meet at a particular Tavern, and a Messenger sent round with a verbal Notice to such as might not have seen the written Summons; At this first Meeting a Committee of seven, consisting of Mr. John Paterson, since gone to London, Mr. Zachariah Macaulay, Mr. John Lees Senior, said to intend going Home this Fall, Mr. John Aitkin, their Treasurer, Mr. Randal Meredith, Mr. John Welles, and Mr. Peter Fargues, was appointed to prepare and adjust Matters with those of Montreal; several discreet People at this Place and Montreal declined attending those Meetings, as soon as they discovered what they aimed at.

There have been several Town Meetings since, as they are pleased to stile them, and Meetings of the joint Committees, at which, tis said, they have resolved to write Letters of Thanks to the Lord Mayor and Corporation of London,[3] to some of the Merchants in the City, and to Mr. Maseres, for having taken the Province under their Protection, and praying a Continuance of their zealous Endeavours in so good a Cause; they intend a handsome Present in Cash to Mr. Maseres, with the Promise of a larger Sum, in Case he succeeds; Petitions are likewise to be presented to The King, to the Lords, and to the Commons,[4] but of all this I speak doubtfully, as they have taken uncommon Pains to keep their whole Proceedings from my knowledge.

This much however is certain, that the Canadians feel some Uneasiness at these Proceedings; they are surprised that such Meetings and nocturnal Cabals should be suffered to exert all their Efforts to disturb the Minds of the People by false and seditious Reports, calculated to throw this Province into the same Disorders that reign in other Parts of this Continent; They express some Impatience and Indignation at being solicited to join in such Proceedings, and are not without their Fears, that some of their Countrymen, under the Awe of menacing Creditors, and others, from Ignorance, may have been induced to put their Hands to a Paper, which, they are assured, is intended to secure their Lands and Property, and take from the Governor the Power of seizing them to his own Use, or sending them and their Families up the Country among the Savages, or waging War, at his own Pleasure, upon the Bostonians; in short to relieve them from the Oppressions and Slavery imposed upon them by those Acts of Parliament; They are the more apprehensive these and such like Reports may have had Effect upon some weak and ignorant People, that from the Precision necessary in the Translation, the Acts themselves have not as yet been promulgated.

I have assured the Canadians, that such Proceedings could never affect the late Measures taken in their Favor, nor did I believe, they ever would succeed with Government upon any Occasion, so that they might remain in perfect Tranquility upon that

1 These were adopted on Sept. 9th, 1774.

2 The chief documents dealing with the Walker outrage are given in the "Report on Canadian Archives" for 1888, p. 1.

3 "On the 22nd of June, the Lord Mayor, attended by several aldermen, the recorder, and upwards of one hundred and fifty of the common council, went up with an address and petition to the King, supplicating his Majesty not to give his assent to the bill." Cavendish's "Debates" &c. Preface, p. IV.

4 These petitions were presented and are given immediately following this despatch.

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Account; Notwithstanding my thorough Conviction, of the Assurances, I have given them, and that all these Town Meetings, all the Reports, breathing that same Spirit, so plentifully gone forth through the neighbouring Provinces, can for the present only excite a trifling and momentary Agitation, I cannot but Regret, such Examples should be set the People of this Province, and think, Government cannot guard too much, or too soon, against the Consequences of an Infection, imported daily, warmly Recommended, and spread abroad by the Colonists here, and indeed by some from Europe, not less violent than the Americans.

I am informed, all Persons from Boston for Canada are searched for Letters, and strictly examined, if they have any verbal Message from General Gage for me, so that I am not likely to hear from the General, before the Navigation opens next Summer.

I am with much Esteem and Respect
Your Lordship's
Most Obedient and
Must Humble Servant

GUY CARLETON

Earl of Dartmouth
One of His Majesty's
Principal Secretaries of State.

PETITIONS FOR THE REPEAL OF THE QUEBEC ACT.[1]

TO THE KING'S MOST EXCELLENT MAJESTY.

THE PETITION of your Majesty's most loyal and dutiful your ancient Subjects settled in the Province of QUEBEC,

MOST HUMBLY SHEWETH

THAT We upon the Faith of your Sacred Majesty's Royal Proclamation bearing Date the Seventh Day of October which was in the Year of Our Lord One thousand seven Hundred and Sixty three Did come and Settle ourselves in the said Province purchasing Houses and Lands and carrying on extensive Trade Commerce and Agriculture whereby the Value of the Land and Wealth of it's Inhabitants are more than doubled during all which Time, We humbly crave leave to say that we have paid a ready and dutiful Obedience to Government and have lived in Peace and Amity with your Majesty's new Subjects. Nevertheless we find and with unutterable Grief presume to say that by a late Act of Parliament intitled "An Act for the making more effectual Provision for the Government of the Province of QUEBEC in North America" We are deprived of the Franchises granted by Your Majesty's Royal Predecessors and by us inherited from our Forefathers THAT We have lost the Protection of the English Laws so universally admired for their Wisdom and Lenity and which we have ever held in the highest Veneration and in their Stead the Laws of CANADA are to be introduced to which we are utter Strangers disgraceful to us as Britons and in their Consequences ruinous to our Properties as we thereby lose the invaluable Privilege of TRIAL by JURIES. THAT

[1] Canadian Archives, Q 11, p. 98. This is also given in Maseres' "An Account of the Proceedings" &c. p. 239. Only the petition to the King is given in the State Papers, but those to the Lords and Commons are also given by Maseres. The British element in the Province, for the most part, on learning the nature of the Quebec Act, which deprived them of the protection of the writ of Habeas Corpus and of trial by jury, under the restored French Law, set about procuring petitions for its repeal or amendment. They formally appointed Maseres as their agent in London, and to him they sent the three petitions to the King, Lords, and Commons. "These petitions were received by Mr. Maseres about the 12th or 13th of last January, 1775; and the first of them, that to the King's majesty, was delivered by him to the Earl of Dartmouth, his majesty's secretary of state for America, on the 18th of the same month; and those to the House of Lords and House of Commons were some time after delivered to the lord Camden and Sir George Savile, who, approving the contents of them, undertook to present them to their respective houses of parliament." "An Account of the Proceedings" &c. p. 238.

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in Matters of a Criminal Nature the HABEAS CORPUS Act is dissolved and we are Subjected to arbitrary Fines and Imprisonment at the Will of the Governor and Council who may at Pleasure render the Certainty of the Criminal Laws of no Effect by the great Power that is granted to them of making Alterations in the same.

WE therefore MOST HUMBLY IMPLORE your Majesty to take our unhappy state into your Royal Consideration and grant us such Relief as your Majesty in your Royal Wisdom shall think meet.

And your Petitioners as in Duty bound
Will ever Pray.

Quebec 12th November 1774.

Zachary Macaulay	Quebec Committee	Thomas Walker	Montreal Committee
John Aitkin		James Price	
J^{no} Paterson		John Blake	
Randle Meredith		Isaac Todd	
John Lees		Alex^{r} Paterson	
John Welles		J^{no} Porteous	
P. Fargues			

John McCord	Rich'd Dobie
Chas. Grant	Geo. Measam
Robert Woolsey	Sam^{l} Jacobs
Nicholas Bayard	Nicholas Brown
Charles Le Marchant	Michl. Morin
John Painter	William Kay
Thomas McCord	John Lilly
Henry Crebassa	John Sunderland
Robt. Willcocks	J. Grant (?)
John Renaud	James Morrison
Christy Cramer	William Laing
Geo: Gregory	George Jinkins
Lewis Chaperon	Franci Smith
	Alexander Wallace
	Frederick Petry
	James Cuming

Ja^{s} Sinclair	Jacob Bittez
John Chisholm	Lauch Smith
James Jeffry	John Saul
Robt. Mcfie	Francis Anderson
Francis Atkinson	Simon Fraser
David Shoolbred	John Ross
Jonas Clarke Minot	John McCluer
Godfrey King	James Woods
George Davison	John Lees
George King	Lemuel Bowles
John Lynd	Thomas David jun.
Caleb Thorne	Patrick O'Doneil
John Lees, jun^{r}	Arch^{d} Lanfort
Robt. Jackson	Simon Fraser Jun^{r}
Hugh Ritchie	Rich^{d} Vincent
Alexander Lawson	Daniel Cameron
Charles Daily	James Galbraith
Edw^{d} Manwaring	Roderick McLeod
Michael Flanagin	John White Swift
J. Melvin	John Bondfield
Geo. Munro	Will: Callander
Ja^{s} Hanna	Da^{d} Geddes

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Joseph Torrey
Tho^{s} Walker, jun^{r}
Ja^{s} Dyer White
J^{no} Bell
Andrew M'Gill
Sam: Holmes
James Blake
James Noel
Thomas McMurray
Allan Paterson
James Symington
Abram Holmes
John Neagle
Peter Arnoldi
Dan^{l} Robertson
Alex^{r} Milmine
Tho^{s} Fraser
A. Porteous
Joseph Ingo
Adam Scott
Ja^{s} Finlay
Pat McClement
W^{m} Pantree
Benj. Holborn
Joseph Borrelee
John Connolly
John Durocher
N. Janis
J. Joran
Jacob Maurer
Simon Levy
Edward Chinn
Rich^{d} McNeall
Robt. Cruickshank
John Comfort
Adam Wentsel
Allan Mcfarlain
Jacob Vander Heyden
Hinrich Gonnermann
John Hare, Jun^{r}
Geo. Wright Knowles
Benj^{n} Frobisher
W^{m} Murray
Ja^{s} Anderson
John Trotter
Christ. Cron
Will^{m} England
Meshach Levy
Thomas Boyd
John Mittleberger
Solomon Mittleberger

Sam^{l} Morrison
John Thomson
Alexander Hay
Ja^{s} Doig
Joseph Bindon
Andrew Hays
Geo: Singleton
J^{no} Stenhouse
John Kay
Dav^{d} Sales T. Franks
John Richardson. Jun^{r}
James Leach
Ezekiel Solomons
James Perry
J. Beck
Lawrence Ermatinger
Simon McTavish
J. Pullman
James Fraser
S. Young
Will^{m} Ashby
Gavin Laurie
Phill. Strickman
Isaac Judah
Peter Mcfarlane
Ja^{s} May
Jacob Schieffelin
Benaiah Gibb
John George Waltz
Michael Phillips
C. J^{ne} Dumoulin
Francois Dumoulin
Duncan Cumming
William Haywood
Johan Nikal

Sein Mann
Robt. McCay
James Robinson
Jean Bernard
Lazarus David
D. Bouthillier
Rich^{d} Walker
Josiah Bleakley
Aaron Hart
Levy Solomons
Alex^{r} Fraser
Malcolm ffraser
John McCord Jun^{r}
Heny Dunn

(Original)

Rec^{d}, 22^{d} January 1775.

SESSIONAL PAPER No. 18

PETITION TO THE LORDS.[1]

"To the Lords Spiritual and Temporal in Parliament assembled.

"The Petition of his Majesty's loyal and dutiful his ancient Subjects settled in "the Province of Quebeck,

"Humbly sheweth,

"That since the commencement of civil government in this province, your lord- "ships' humble petitioners, under the protection of English laws granted us by his "sacred majesty's royal proclamation, bearing date the seventh day of October, which "was in the year of our Lord one thousand seven hundred and sixty-three, have been "encouraged to adventure their properties in trade, estates and agriculture, to a very "considerable amount, thereby rendering the province a valuable acquisition to Great- "Britain: That, to their inexpressible grief, they find, by an act of parliament intitled, "*An act for making more effectual provision for the government of the province of Quebeck* "*in North-America*," they are deprived of the habeas corpus act and trial by juries, "are subjected to arbitrary fines and imprisonment, and liable to be tried both in "civil cases and matters of a criminal nature, not by known and permanent laws, but "by ordinances and edicts which the governour and council are impowered to make "void at their will and pleasure, which must render our persons and properties insecure, "and has already deeply wounded the credit of the country, and confined our views in "trade to very narrow limits.

"In this cruel state of apprehension and uncertainty, we humbly implore your "lordships' favourable interposition, as the hereditary guardians of the rights of the "people, that the said act may be repealed or amended, and that your humble peti- "tioners may enjoy their constitutional rights, privileges, and franchises heretofore "granted to all his majesty's dutiful subjects.

"And your petitioners, as in duty bound, will ever pray.

"Quebeck, 12th Nov. 1774."

PETITION TO THE COMMONS.[2]

"To the Honourable the Commons of Great-Britain in Parliament assembled.

"The humble Petition and Memorial of his Majesty's ancient Subjects the Seig- "neurs, Freeholders, Merchants, Traders, and others settled in his Majesty's Province "of Quebeck,

"Sheweth,

"That, under the sanction of his majesty's royal proclamation, bearing date the "seventh day of October, in the year of our Lord one thousand seven hundred and "sixty-three, which graciously promises to all persons inhabiting in, or resorting to, "this province, his royal protection for the enjoyment of the benefit of the laws of the "realm of England, until assemblies should be called therein, they did come and settle "themselves in this province, having entrusted their own properties, as well as very "considerable sums of their friends, in goods and merchandize, from Great-Britain, and "entrusted the same into the hands of the Canadians, as well for the purpose of internal "trade in the province, as for outsets in carrying on the traffick of furs and peltries in "the Indian countries and fisheries below Quebeck, many of them having purchased "lands and houses, and been employed in agriculture, and the exportation of grain and "other produce to foreign markets, to the great benefit and emolument of the said "province, which has flourished chiefly by the industry and enterprising spirit of the

[1] "An Account of the Proceedings" &c. p. 246. This bears the same signatures as the petition to the King.

[2] "An Account of the Proceedings" &c. p. 254. This also bears the same list of names as the other petitions.

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"said subjects, who, under the protection of British laws, and by the assistance of "annual supplies of British manufactures, and other goods and merchandize obtained "upon credit from the merchants of Great-Britain, have been enabled to carry on at "least four parts in five of all the imports and exports which are principally made "in British bottoms, the latter consisting of furs, peltries, wheat, fish, oil, pot-ash, "lumber, and other country produce: and for the more convenient carrying on "the said trade and commerce, they have built wharfs and store-houses at a very "great expence, insomuch that the property, real and personal, now in British hands, "or by them entrusted to Canadians at a long credit, is one half of the whole value of the "province, exclusive of the wealth of the different communities; which your petitioners "have in part set forth in the humble petition to his most excellent majesty, dated at "Quebeck the thirty-first day of December which was in the year of our Lord one thou-"sand seven hundred and seventy-three;[1] humbly praying, that he would be graciously "pleased to require his governour or commander in chief to call a general assembly, in "such manner, and of such constitution and form, as to his majesty's royal wisdom "should seem best adapted to secure the peace, welfare, and good government of this "province. Wherefore with deep concern they observe, that in certain examinations "taken before your honourable house, the British subjects here have been grossly "abused and misrepresented, as well as to their numbers as in their importance in "this province. For the number of the new subjects has, we humbly conceive, been "greatly exaggerated, it being, by the last computation, about seventy-five thousand; "whereas, by an enumeration of the British subjects, they amount at this time to "upwards of three thousand souls, besides many that we cannot immediately ascertain "that are dispersed in the Indian countries carrying on traffick with the savages, "besides the merchants and traders with their families settled at Detroit and its depen-"dencies, and at the fisheries below Quebeck. And whereas an act of parliament has "lately passed, intituled, "*An act for the making more effectual provision for the go-"vernment of the province of Quebeck in North-America*," which is said to have been pass-"ed upon the principles of humanity and justice, and at the pressing instance and "request of the new subjects, signified to his majesty by an humble petition[2] setting "forth their dislike to the British laws and form of government, and praying, in the "name of all the inhabitants and citizens of the province, to have the French institutes "in their stead, and a total abolition of trials by jury, together with a capacity of "holding places of honour and trust in common with his majesty's ancient subjects. "We crave leave to inform your honourable house, that the said petition was never "imparted to the inhabitants in general (that is) the freeholders, merchants and tra-"ders, who are equally alarmed with us at the Canadian laws being to take place, but "was in a secret manner carried about and signed by a few of the seigneurs, chevaliers, "advocates, and others in their confidence, at the suggestions, and under the influence "of their priests; who, under colour of French laws, have obtained an act of parlia-"ment which deprives his majesty's ancient subjects of all their rights and franchises, "destroys the Habeas Corpus act, and the inestimable privilege of trial by juries, the "only security against the venality of a corrupt judge, and gives unlimited power to "the governour and council to alter the criminal laws; which act has already struck "a damp upon the credit of the country, and alarmed all your humble petitioners with "the just apprehensions of arbitrary fines and imprisonment, and which, if it takes place, "will oblige them to quit the province, or, in the end, it must accomplish their ruin, "and impoverish or hurt their generous creditors, the merchants in Great-Britain, &c. "To prevent which, your petitioners most humbly pray that the said act may be "repealed or amended, and that they may have the benefit and protection of the Eng-"lish laws, in so far as relates to personal property; and that their liberty may be "ascertained according to their ancient constitutional rights and privileges heretofore "granted to all his majesty's dutiful subjects throughout the British empire.

"And your petitioners, as in duty bound, will ever pray.

"Quebeck, 12th Nov. 1774."

[1] See p. 347.
[2] See p. 354.

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INSTRUCTIONS TO GOVERNOR CARLETON, 1775.[1]

George R.
[L. S.]

Instructions to Our Trusty and Welbeloved Guy Carleton Esquire, Our Captain General and Governor in Chief in, and over Our Province of Quebec in America and of all Our Territories dependent thereupon. Given at Our Court at S[t] James's the Third Day of January 1775. In the Fifteenth year of Our Reign.

First, With these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain, constituting you Our Captain General and Governor in Chief in, and over Our Province of Quebec in America, and all Our Territories thereunto belonging, as the said Province and Territories are bounded and described in, and by the said Commission. You are therefore to take upon you the Execution of the Office and Trust We have reposed in you, and the Administration of the Government, and to do and execute all things in due manner, that shall belong to your Command according to the several Powers and Authorities of our said Commission under Our Great Seal of Great Britain, and these Our Instructions to you, or according to such further Powers and Instructions, as shall at any time hereafter be granted or appointed you under Our Signet and Sign Manual, or by Our Order in Our Privy Council; and you are to call together at Quebec, (Which We do hereby appoint to be the place of your ordinary Residence, and the principal Seat of Government,) the following persons whom We do hereby, with the Advice of Our Privy Council, constitute and appoint to

[1] Canadian Archives, M. 230, p. 116. There are several memoranda among the Dartmouth Papers, giving suggestions or draughts of various parts of the new Instructions for the Governor of Quebec. Most of these are without name or date. Some of them are referred to in connection with the articles of the Instructions to which they relate. Among them is one endorsed, "Minutes of Quebec Instructions," which indicates some of the chief points to be considered in framing the Instructions. It is as follows:—(the numbers of the articles in the Instructions which embody the features indicated are given within brackets after each head):

"Quebec—Habeas Corpus writ [13]

"Supreme Court of criminal Jurisdiction called K[s] Bench. 2 Districts, Quebec & Montreal C. of Com. Pleas in each for civil suits 3 Judges in each. 2 Nat. Born & 1 Canadian. 1 C. of K's B. in each of the 5 out Posts. 1 Judge, & 1 Canad. Assessor in Treason murder or Cap. Felony only to have power to commit Council to be Court of appeal where above 10£ final to £500, above appeal to K. in Council. all Commissions, during pleasure. [15]

"Gov[r] not to displace officers without representation. [17]

"No ecclesiast. Jurisd. to be exercised without Licence. No person to be ordained without Licence. [21, sec. 2]

"Prot. Tythes to be paid to Rec[r] Gen[l] for support of Protestant Clergy. [21, sec. 5]

"Seminaries of Qu. & Montr. to remain— [21, sec. 11]

"All other Communities (except J'suits) to remain as at present—not to fill up except Nuns." [21, sec. 12] M. 385, p. 372.

On Dec. 5, 1774, the Board of Trade submitted to the King the draught of a new Commission for Governor Carleton with such formal changes only, as compared with the last, as were required by the terms of the Quebec Act. On Dec. 22nd the Board of Trade laid before the King the draught of the General Instructions for Governor Carleton. "This draught," they say, "contains not only such Instructions as are usually given to other governors, so far as the same are applicable to this Province under its New Constitution of Government; but also such other directions for the establishment of Judicature; the reform and regulation of Ecclesiastical matters; and the arrangements proper to be made in respect to the Coast of Labrador, and the interior Country, as appear to us to be necessary in consequence of the Act passed in the last Session of the late Parliament; it also contains an appointment of the Council conformable to that Act, and directs the provisions to be made for the support of the Civil Establishment of Government.

"We also humbly beg leave to lay before your Majesty a draught of such Instructions to your Majesty's Governor of Quebec as are usually given to the governors of your Majesty's other Colonies respecting the observance and the execution of the Laws for regulating the Plantation Trade.

"All which is most humbly submitted, Whitshed Keene, C. F. Greville, Soame Jenyns, W. Jolliffe." Q. 18 B., p. 108.

On Jan. 7th, 1775, Dartmouth sent a despatch to Carleton enclosing his Commission and Instructions. After repeating the statements of the Board of Trade, given above, he adds, "These documents contain such arrangements, in consequence of the Act of the 14th of his present Majesty, for providing for the more effectual Government of the Province of Quebec, as were necessary to accompany the new Commission, & also the outlines of that System of Judicature, & general Regulation of Ecclesiastical Affairs, which the King thinks fit should be provided for by Ordinances of the Legislative Council. Q. 11, p. 59.

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be Our Council for the Affairs of Our said Province of Quebec, and the Territories thereunto belonging; Viz. Hector Theophilus Cramahé Esquire, Our Lieutenant Governor of Our said Province or Our Lieutenant Governor of Our said Province for the time being, Our Chief Justice of Our Province for the time being, Hugh Finlay, Thomas Dunn, James Cuthbert, Colin Drummond, Francis Les Vesques; Edward Harrison, John Collins, Adam Mabean,—De Lery,—S^t Ours, Picodyde Contrecoeur, Our Secretary of Our said Province for the time being, George Alsopp,—De La Naudiére, La Corne S^t Luc, Alexander Johnstone, Conrad Gugy,—Bellestres,—Rigauville, and John Fraser Esquires; All and every of which Person and Persons shall hold and enjoy his & their Office and Offices of Councillor or Councillors for Our said Province of Quebec, for and during Our Will and Pleasure, and his or their Residence within Our said Province, and not otherwise.

2. It is Our further Will and Pleasure, that any five of the said Council shall constitute a Board of Council for transacting all Business, in which their Advice and consent may be requisite, Acts of Legislation only excepted, (in which Case you are not to act without a Majority of the whole,) And it is Our further Will and Pleasure, that the Members of Our said Council shall have and enjoy all the Powers, Priviledges and Emoluments enjoyed by the Members of Our Councils in Our other Plantations; and also such others as are contained and directed in Our said Commission under Our Great Seal of Great Britain, and in these Our Instructions to you; and that they shall meet together at such time and times, place and places, as you in your discretion shall think necessary, except when they meet for the purpose of Legislation, in which Case they are to be assembled at the Town of Quebec only.

3. And You are with all due and usual Solemnity to cause Our said Commission to be read and published at the said Meeting of Our Council, which being done, you shall then take and also administer to each of the Members of Our said Council, (not being a Canadian, professing the Religion of the Church of Rome,) the Oaths mentioned in an Act passed in the first year of the Reign of His Majesty King George the first, intituled, "An Act for the further Security of His Majesty's Person, and Gov-"ernment, and the Succession of the Crown in the Heirs of the late Princess Sophia, "being Protestants; and for extinguishing the hopes of the pretended Prince of "Wales, and his open and secret Abettors," as altered and explained by an Act passed in the sixth year of Our Reign, intituled, "An Act for altering the Oath of Abjura-"tion, and the Assurance; and for amending so much of an Act of the seventh year "of Her late Majesty Queen Anne, intituled, An Act for the Improvement of the "Union of the two Kingdoms, as, after the time therein limited, requires the delivery "of certain Lists and Copies, therein mentioned, to persons indicted of High Treason, "or Misprision of Treason;" as also make and subscribe, and cause them to make and subscribe the declaration mentioned in an Act of Parliament made in the twenty fifth Year of the Reign of King Charles the second, intituled, "An Act for preventing "Dangers, which may happen from Popish Recusants;" and you and every one of them are likewise to take an Oath for the due Execution of your and their Places and Trusts, with regard to your and their equal and impartial Administration of Justice; and you are also to take the Oath required by an Act passed in the seventh and eighth years of the Reign of King William the third, to be taken by Governors of Plantations to do their utmost, that the Laws relating to the Plantations be observed.

4. And Whereas by an Act passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual provision for the Government of the Province "of Quebec in North America," it is enacted and provided, that no person, professing the Religion of the Church of Rome, and residing in the said Province, shall be obliged to take the Oath of Supremacy required by an Act passed in the first year of the Reign of Queen Elizabeth, or any other Oaths substituted by any other Act in the place thereof; but that every such Person, who by the said Statute is required to take the Oaths therein mentioned, shall be obliged, and is thereby required, under certain Penalties, to take and subscribe an Oath in the form and Words therein prescribed, and set down; It is therefore Our Will and Pleasure, that you do administer to each and every Member of Our said Council, being a Canadian, and professing the Religion

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of the Church of Rome, and cause each of them severally to take and subscribe the Oath mentioned in the said Act passed in the fourteenth year of Our Reign, intituled; "An Act for making more effectual provision for the Government of the "Province of Quebec in North America ;" and also cause them severally to take an Oath for the due Execution of their places and Trusts, and for their equal and impartial administration of Justice.

5. And that We may be always informed of the Names and Characters of Persons fit to supply the Vacancies, which may happen in Our said Council, You are from time to time to transmit to Us, by one of Our Principal Secretaries of State, the names and Characters of such persons, Inhabitants of Our said Colony, whom you shall esteem the best qualified for that Trust ; And you are also to transmit a duplicate of the said Account to Our Commissioners for Trade and Plantations, for their Information.

6. And if it shall at any time happen, that by the death or departure out of Our said Province, of any of Our said Councillors, there shall be a Vacancy in Our said Council, Our Will and Pleasure is ; that you signify the same to Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and Plantations, by the first Opportunity, that we may by Warrant under Our Signet and Sign Manual, and with the Advice of Our Privy Council, constitute and appoint others in their stead.

7. You are forthwith to communicate such and so many of these Our Instructions to Our said Council, wherein their Advice and Consent are mentioned to be requisite, as likewise all such others from time to time, as you shall find convenient for Our Service to be imparted to them.

8. You are to permit the Members of Our said Council to have and Enjoy Freedom of Debate and vote in all Affairs of Public Concern, that may be debated in Council.

9. And Whereas by the aforesaid Act passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual Provision for the Government of the "Province of Quebec in North America," It is further enacted and Provided, that the Council for the Affairs of the said Province, to be constituted and appointed in Manner therein directed, or the Major Part thereof, shall have power and Authority to make Ordinances for the peace, Welfare, and good Government of the said Province with the Consent of Our Governor, or, in his absence, of the Lieutenant Governor, or Commander in Chief for the time being ; provided, that no Ordinance shall be passed, unless upon some urgent Occasion at any Meeting of the Council, except between the first day of January and the first day of May. *(And Whereas the State and condition of Our said Province do require, that immediate provision should be made by Law for a Great Variety of Arrangements and Regulations essentially necessary to the Government thereof ; It is therefore Our Will and Pleasure, that you do within a convenient time issue Summons for the Assembling of our said Council in their Legislative Capacity either on the first day of April next, or as soon after as may be convenient, in Order to deliberate upon, and frame such Ordinances, as the Condition of Affairs within Our said Province shall require, and as shall, in your and their Judgement, be fit and necessary for the Welfare of Our said Province, and the Territories thereunto belonging.)[1]

10. You are nevertheless to take especial Care,

That no Ordinance be passed at any Meeting of the Council, where less than a Majority of the Council is present, or at any time, except between the first day of January and the first day of May, as aforesaid, unless upon some urgent Occasion ; in which Case every Member thereof resident at Quebec, or within fifty Miles thereof shall be personally summoned to attend the same.

That no Ordinance be passed for laying any Taxes or Duties, such Rates and Taxes only excepted, as the Inhabitants of any Town or District may be authorized to assess, levy, and apply within the said Town or District, for the making Roads, erecting and repairing public Buildings, or for any other purpose respecting the Local Convenience and Oeconomy of such Town or District.

*The latter part of this section (in bracket) omitted in the instructions to Haldimand.

[1] No session of the Council for legislative purposes took place before January, 1777.

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That no Ordinance touching Religion, or by which any punishment may be inflicted greater than Fine or Imprisonment for three Months, be made to take effect, until the same shall have received Our Approbation.

That no Ordinance be passed relative to the Trade, Commerce, or Fisheries of the said Province, by which the Inhabitants thereof shall be put upon a more advantageous footing, than any other His Majesty's Subjects either of this Kingdom, or the Plantations.

That no Ordinance respecting private property be passed without a Clause suspending its Execution, until Our Royal Will and Pleasure is known; nor without a saving of the Right of Us, Our Heirs, and Successors, and of all Bodies politic and corporate, and of all other persons, except such as are mentioned in the said Ordinance, and those claiming by, from, and under them; And, before such Ordinance is passed, proof must be made before you in Council, and entered in the Council-Books, that public Notification was made of the Party's Intention to apply for such Ordinance in the several Parish Churches, where the Lands in Question lye, for three Sundays at least successively, before any such Ordinance shall be proposed; and you are to transmit and annex to the said Ordinance a Certificate under your hand that the same passed through all the Forms abovementioned.

That no Ordinance shall be enacted for a less time than two years, except in Cases of imminent Necessity, or immediate temporary Expediency; and you shall not reenact any Ordinance, to which Our Assent shall have been once refused, without express leave for that purpose first obtained from Us, upon a full Representation by you to be made to Us by one of Our Principal Secretaries of State, and to Our Commissioners for Trade and Plantations, for their Information, of the Reasons and Necessity for passing such Ordinance; nor give your Assent to any Ordinance for repealing any other Ordinance, which hath passed in your Government, and shall have received Our Royal Approbation, unless you take Care, that there be a Clause inserted therein suspending and deferring the Execution thereof, until Our Pleasure shall be known, concerning the Same.

That in all Ordinances imposing Fines, Forfeitures, or Penalties, express Mention be made, that the same is granted, or reserved to Us, Our Heirs, and Successors for the public Uses of the said Province, and the Support of the Government thereof, as by the said Ordinance shall be directed; and that a Clause be inserted declaring, that the Money, arising by the Operation of the said Ordinance, shall be accounted for unto Us in this Kingdom, and to Our Commissioners of Our Treasury for the time being; and audited by Our Auditor General of Our Plantations, or his Deputy.

That all such Ordinances be transmitted by you within six Months after their passing, or sooner, if opportunity offers, to Us by One of our Principal Secretaries of State, and Duplicates thereof to Our Commissioners for Trade and Plantations, for their Information; that they be abstracted in the Margents, and accompanied with very full and particular Observations upon each of them, that is to say, whether the same is introductive to a new Law, or does repeal a Law then before in being; and you are also to transmit in the fullest manner the Reasons and Occasion for enacting such Ordinances, together with fair Copies of the Journals of the proceedings of the Council, which you are to require from the Clerk of the said Council.

11. In the Consideration of what may be necessary to be provided for by Law within Our said Province, as created and established by the aforesaid Act, intituled, "an Act for making more effectual Provision for the Government of the Province of "Quebec in North America," a Great Variety of important Objects hold themselves forth to the Attention of the Legislative Council.

12. The Establishment of Courts, and a proper Mode of administering Civil and Criminal Justice throughout the whole Extent of Our Province, according to the Principles declared in the said Act "for making more effectual Provision for the "Government thereof," demand the greatest Care and Circumspection; for, as on the one hand it is Our Gracious purpose, conformable to the Spirit and Intention of the said Act of Parliament, that Our Canadian Subjects should have the benefit and use of their own Laws, Usages, and Customs in all Controversies respecting Titles of Land,

and the Tenure, descent, Alienation, Incumbrances, and Settlement of Real Estates, and the distribution of the personal property of Persons dying intestate; so on the other hand, it will be the duty of the Legislative Council to consider well in framing such Ordinances, as may be necessary for the Establishment of Courts of Justice, and for the better Administration of Justice, whether the Laws of England may not be, if not altogether, at least in part the Rule for the decision in all Cases of personal Actions grounded upon Debts, Promises, Contracts, and Agreements, whether of a Mercantile or other Nature; and also of Wrongs proper to be compensated in damages; and more especially where Our natural-born Subjects of Great Britain, Ireland, or Our other Plantations residing at Quebec, or who may resort thither, or have Credits, or Property within the same, may happen to be either Plaintiff or defendant in any civil Suit of such a nature.[1]

13. Security to personal Liberty is a fundamental Principle of Justice in all free Governments, and the making due provision for that purpose is an object the Legislature of Quebec ought never to lose Sight of; nor can they follow a better Example than that, which the Common Law of this Kingdom hath set in the Provision made for a Writ of Habeas Corpus,[2] which is the Right of every British Subject in this Kingdom.

14. With Regard to the Nature and number of the Courts of Justice, which it may be proper to establish, either for the whole Province at large, or separately for its dependencies, and the times and places for holding the said Courts, no certain Rule can be laid down in a Case, in which the Judgement must in many Respects at least be altogether guided by Circumstances of local Convenience and Consideration.

15. In General it may be proper, that there should be a Superior or Supreme Court of criminal Justice and Jurisdiction for the Cognizance of all Pleas of the Crown, and for the Trial of all manner of Offences whatsoever, to be held before the Chief Justice for the time being at such times and places, as shall be most convenient for the due and speedy Administration of Justice, and the preventing long Imprisonments; the said Court to be called and known by the name of the Court of King's Bench; That, for the more orderly establishment and Regulation of Courts of Civil Jurisdiction, the Province of Quebec, as limited and bounded by the aforesaid Act of Parliament "for making more effectual Provision for the Government of the Province "of Quebec in North America," be divided into two Districts by the names of Quebec and Montreal, each district to be limited and bounded in such manner, as shall be thought best adapted to the Object of the Jurisdiction to be established therein; That there be established in each of the said Districts a Court of Common pleas to be held at such times and places, as shall be judged most convenient, and to have full power, Jurisdiction and Authority to hear and determine all Civil Suits and Actions cognizable by the Court of Common Pleas in Westminster Hall, according to the Rules prescribed by the said Act of Parliament "for making more effectual Provision for the Govern-"ment of the Province of Quebec in North America," and according to such Laws and Ordinances, as shall from time to time be enacted by the Legislature of the said Province in manner therein directed; That there be three Judges in each of the said Courts of Common Pleas, that is to say, two of Our natural-born Subjects of Great Britain, Ireland, or Our other Plantations, and one Canadian; and also one Sheriff appointed for each district; That besides the foregoing Courts of Criminal and Civil Jurisdiction for the Province at large, there be also an Inferior Court of Criminal

[1] This and the following article with reference to the writ of Habeas Corpus, form the first step in that piecemeal process of impairing the complete restoration of the French Canadian civil law granted by the Quebec Act, particularly the 8th clause of it. As may be seen from several subsequent documents, this was the basis of continued conflict in the Council and in the Courts until 1791, when the controversy took another turn. In a document in the Dartmouth Papers, endorsed "Extract from the Instructions to the Governor of Quebec, so far as relates to the Establishment of Courts of Law," this clause appears in the following form:—"The Legislative Council are to frame the Ordinances for the Establishment of Courts of Justice, and for the administration of Justice, so as that the Laws of England, if not altogether, may be as nearly as possible the Rule of Decision in all personal Actions, grounded upon Debts, Contracts, &c. and especially where the natural-born subjects are concerned." M. 385, p. 485.

[2] Yet when this was most vigorously contended for at the passing of the Quebec Act it was absolutely denied by the Government. In the document referred to in the previous note, this article reads as follows, —"Security to personal Liberty to be provided for: And the Writ of Habeas Corpus, as a part of the criminal Law, to be adopted in its full Extent." M 385, p. 485.

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and Civil Jurisdiction in each of the Districts of the Illinois, S[t] Vincenne, Detroit, Missilimakinac, and Gaspée, by the Names of the Court of King's Bench for such district, to be held at such times, as shall be thought most convenient, with Authority to hear and determine in all Matters of Criminal Nature according to the Laws of England, and the Laws of the Province hereafter to be made and passed; and in all Civil matters according to the Rules prescribed by the aforesaid Act of Parliament "for making more effectual Provision for the Government of Quebec in North "America;" That each of the said Courts shall consist of one judge, being a natural-born Subject of Great Britain, Ireland, or Our other Plantations, and of one other Person, being a Canadian, by the name of Assistant or Assessor, to give advice to the Judge in any Matter, when it may be necessary; but to have no Authority or Power to attest or issue any Process, or to give any Vote in any order, Judgement, or decree; That the said Judges, so to be appointed, as aforesaid, for each District, shall have the same power and Authority in Criminal Cases, as is vested in the Chief Justice of Our said Province; and also the same Power and Authority in Civil Cases, as any other Judge of Common Pleas within Our said Province, excepting only that, in Cases of Treason, Murder, or other Capital Felonies, the said Judges shall have no other Authority, than that of Arrest and Commitment to the Goals of Quebec, or of Montreal, where alone Offenders in such Cases shall be tried before Our Chief Justice: That a Sheriff be appointed in each of the said Districts for the Execution of Civil and Criminal Process; That the Governor and Council (of which, in the absence of the Governor and Lieutenant Governor, the Chief Justice is to be President,) shall be a Court of civil Jurisdiction for the hearing and determining all Appeals from the Judgement of the other Courts, where the matter in dispute is above the value of Ten Pounds; That any Five of the said Council, with the Governor, Lieut[t] Governor, or Chief Justice, shall constitute a Court for that purpose; and that their Judgement shall be final in all Cases not exceeding the Value of £500 sterling, in which Cases an Appeal from their Judgement is to be admitted to Us in Our Privy Council. It is however Our Will and Pleasure, that no Appeal be allowed, unless security be first duly given by the Appellant, that he will effectually prosecute the same, and answer the Condemnation, as also pay such Costs and Damages, as shall be awarded by Us, in case the Sentence be affirmed; Provided nevertheless, where the matter in question relates to the taking or demanding any Duty payable to Us, or to any Fee of Office, or annual Rents, or other such like matter or thing, where the Rights in future may be bound, in all such Cases appeal to Us, in Our Privy Council is to be admitted, tho' the immediate sum or value appealed for be of less value.—And it is Our further Will and Pleasure, that in all Cases, where Appeals are admitted unto Us in Our Privy Council, execution be suspended until the final determination of such Appeal, unless good and sufficient security be given by the Appellee to make ample restitution of all, that the Appellant shall have lost by means of such decree or judgement, in case, upon the determination of such Appeal, such decree or judgement should be reversed, and restitution awarded to the Appellant. Appeals unto Us in Our Privy Council are also to be admitted in all cases of Fines imposed for misdemeanors; Provided the fines, so imposed, amount to, or exceed the sum of £100 sterling, the Appellant first giving good Security, that he will effectually prosecute the same and answer the Condemnation, if the sentence, by which such Fine was imposed in Quebec, be affirmed.*[1]

16. It is Our Will and Pleasure, that all Commissions to be granted by you to any person or persons to be judges or justices of the peace, or other necessary Officers, be granted during pleasure only.

17. You shall not displace any of the Judges, Justices of the peace or other Officers or Ministers without good and sufficient cause, which you shall signify in the fullest and

*An additional article inserted in Haldimand's instructions. See page 475.

[1] The greater part of this article of the Instructions is based upon the "Epitome of the proposed Ordinance for establishing Courts of Justice in the Province of Quebec," referred to in note 4, p. 411. The paper endorsed "Extract from the Instructions" &c. covers this field also, but its lines are not followed. However, the last few clauses in it are again taken up in the succeeding four articles, Nos. 16—19.

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most distinct manner to Us by one of Our principal Secretaries of State, and to Our Commissioners for Trade and Plantations, for their information.

18. And whereas frequent complaints have heretofore been made of great delays and undue proceedings in the Courts of Justice in several of Our Plantations, whereby many of Our good Subjects have very much suffered; and it being of the greatest importance to Our Service, and to the welfare of Our Plantations, that Justice be every where speedily and duly administered; and that all disorders, delays, and other undue Practises in the administration thereof be effectually prevented; We do particularly require you to take especial Care, that in all Courts, where you are or shall be authorized to preside, justice be impartially administered; and that in all other Courts established, or to be established within Our said Province, all Judges, and other Persons therein concerned do likewise perform their several Duties without any delay or partiality.

19. You are to take care, that all Writs be issued in Our Name throughout the Province under your Government.

20. The establishment of proper regulations in matters of ecclesiastical concern is an Object of very great importance, and it will be your indispensable duty to lose no time in making such arrangements in regard thereto, as may give full satisfaction to Our new Subjects in every point, in which they have a right to any indulgence on that head; always remembring, that it is a toleration of the free exercise of the religion of the Church of Rome only, to which they are entitled, but not to the powers and privileges of it, as an established Church, for that is a preference, which belongs only to the Protestant Church of England.

21. Upon these principles therefore, and to the end, that Our just Supremacy in all matters ecclesiastical, as well as civil, may have its due scope and influence, it is Our Will and Pleasure,———

First, that all Appeals to, or correspondence with any foreign ecclesiastical jurisdiction, of what nature or kind so ever, be absolutely forbidden under very severe Penalties.

Secondly, That no Episcopal or Vicarial Powers be exercised within Our said Province by any Person professing the Religion of the Church of Rome, but such only, as are essentially and indispensably necessary to the free exercise of the Romish Religion; and in those cases not without a Licence and Permission from you under the Seal of Our said Province, for, and during Our Will and Pleasure, and under such other limitations & restrictions, as may correspond with the spirit and provision of the Act of Parliament, "for making more effectual provision for the Government of "the Province of Quebec;" And no person whatever is to have holy Orders conferred upon him, or to have the Cure of Souls without a License for that purpose first had or obtained from you.

Thirdly, That no person professing the Religion of the Church of Rome be allowed to fill any ecclesiastical Benefice, or to have and enjoy any of the Rights or Profits belonging thereto, that is not a Canadian by birth, (such only excepted, as are now in possession of any such Benefice,) and that is not appointed thereto by Us, or by, or under Our Authority, and that all Right, or claim of Right in any other Person whatever to nominate, present, or appoint to any vacant Benefice, other than such as may lay claim to the patronage of Benefices, as a Civil Right, be absolutely abolished. No Person to hold more than one Benefice, or at least not more than can reasonably be served by one and the same Incumbent.

Fourthly, That no person whatever, professing the Religion of the Church of Rome, be appointed Incumbent of any Parish, in which the Majority of the Inhabitants shall solicit the appointment of a Protestant Minister; in such case the Incumbent shall be a Protestant, and entitled to all Tythes payable within such Parish; But nevertheless the Roman Catholicks may have the use of the Church for the free exercise of their Religion at such time, as may not interfere with the Religious Worship of the Protestants: And in like manner the Protestant Inhabitants in every Parish, where the Majority of Parishioners are Roman Catholicks, shall notwithstanding have

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the use of the Church for the exercise of their Religion at such times, as may not interfere with the Religious Worship of the Roman Catholicks.

Fifthly, That no Incumbent professing the Religion of the Church of Rome, appointed to any Parish, shall be entitled to receive any Tythes for Lands, or Possessions occupied by a Protestant; but such Tythes shall be received by such Persons, as you shall appoint, and shall be reserved in the hands of Our Receiver General, as aforesaid, for the support of a Protestant Clergy in Our said Province to be actually resident within the same, and not otherwise, according to such directions as you shall receive from Us in that behalf.—And in like manner all growing Rents and Profits of a vacant Benefice shall, during such vacancy, be reserved for, and applied to the like uses.

Sixthly, That all Persons professing the Religion of the Church of Rome, which are already possessed of, or may hereafter be appointed to any ecclesiastical Benefice, or who may be licensed to exercise any Power or Authority in respect thereto, do take and subscribe before you in Council, or before such Person as you shall appoint to administer the same, the Oath required to be taken and subscribed by the aforesaid Act of Parliament passed in the fourteenth year of Our Reign, intituled, "An Act for making more effectual Provision for the Government of the Province of Quebec in North "America."

Seventhly, That all Incumbents of Parishes shall hold their respective Benefices during good behaviour, subject however, in cases of any Conviction for criminal Offences, or upon due proof of seditious Attempts to disturb the Peace and Tranquillity of Our Government, to be deprived, or suspended by you with the Advice and Consent of a Majority of Our said Council.

Eighthly, That such Ecclesiasticks, as may think fit to enter into the holy state of Matrimony, shall be released from all Penalties, to which they may have been subjected in such Cases by any Authority of the See of Rome.

Ninthly, That freedom of Burial of the Dead in Churches and Church yards be allowed indiscriminately to every Christian Persuasion.

Tenthly, That the Royal Family be prayed for in all Churches and Places of Holy Worship, in such manner and form, as are used in this Kingdom; and that Our Arms and Insignia be put up not only in all such Churches and Places of holy Worship, but also in all Courts of Justice; and that the Arms of France be taken down in every such Church or Court, where they may at present remain.

Eleventhly, That the Society of Romish Priests, called the Seminaries of Quebec and Montreal, shall continue to possess and occupy their Houses of Residence, and all other Houses and Lands, to which they were lawfully intitled on the 13th of September 1759; and it shall be lawful for those Societies to fill up Vacancies, and admit new Members according to the Rules of their Foundations, and to educate Youth, in order to qualify them for the Service of Parochial Cures; as they shall become vacant. It is nevertheless Our Will and Pleasure, that not only these Seminaries, but all other Religious Communities, so long as the same shall continue, be subject to visitation by You Our Governor, or such other Person or Persons, as you shall appoint for that purpose, and also subject to such Rules and Regulations, as you shall, with the Advice and Consent of Our Council, think fit to establish and appoint.

Twelfthly, It is also Our Will and Pleasure, that all other Religious Seminaries and Communities (that of the Jesuits only excepted) do for the present and until We can be more fully informed of the true State of them, and how far they are, or are not essential to the free exercise of the Religion of the Church of Rome, as allowed within Our said Province, remain upon their present Establishment; but you are not to allow the admission of any new Members into any of the said Societies or Communities, the Religious Communities of Women only excepted, without our express orders for that purpose. That the Society of Jesuits be suppressed and dissolved, and no longer continued, as a Body corporate and politic, and all their Rights, Possessions and Property shall be vested in Us for such purposes, as We may hereafter think fit to direct and appoint; but We think fit to declare Our Royal Intention to be, that the present Members of the said Society, as established at Quebec shall be allowed sufficient

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stipends and Provisions during their natural Lives ;—That all Missionaries amongst the Indians, whether established under the Authority of, or appointed by the Jesuits, or by any other ecclesiastical Authority of the Romish Church, be withdrawn by degrees, and at such times and in such manner, as shall be satisfactory to the said Indians, and consistent with the Public Safety; and Protestant Missionaries appointed in their places; That all ecclesiastical Persons whatsoever, of the Church of Rome, be inhibited, upon Pain of Deprivation, from influencing any Person in the making a Will, from inveigling Protestants to become Papists, or from tampering with them in matter of Religion, and that the Romish Priests be forbid to inveigh in their Sermons against the Religion of the Church of England, or to marry, baptize, or visit the sick, or bury any of Our Protestant Subjects, if a Protestant Minister be upon the Spot.

22. You are at all times and upon all occasions to give every Countenance and Protection in your Power to such Protestant Ministers, and School Masters, as are already established within Our said Province, or may hereafter be sent thither, to take Care, that such Stipends and Allowances, as We may think fit to appoint for them, be duly paid; that the Churches already appropriated, or which may hereafter be appropriated to the use of Divine Worship according to the Rites of the Church of England, as by Law established, be well and orderly kept; and, as the Number of Protestants shall, by God's Blessing, increase, to lay out new Parishes in convenient Situations, and set apart and appropriate proper Districts of Land therein for the Scite of Churches, and Parsonage Houses, and for Glebes for the Ministers and Schoolmasters.

23. You are to take especial Care, that God Almighty be devoutly and duly served in all Protestant Churches and Chapels throughout Our said Province, in which Divine Service is performed according to the Rites of the Church of England; the Book of Common Prayer, as by Law established, be read each Sunday and Holiday; and the Blessed Sacrament duly administered.

24. You are not to prefer any Protestant Minister to any ecclesiastical Benefice in the Province under your Government, without a Certificate from the Right Reverend Father in God the Lord Bishop of London, of his being conformable to the Doctrine and Discipline of the Church of England, and of a good Life and Conversation; and if any Person hereafter preferred to a Benefice shall appear to you to give Scandal either by his doctrine or manners, you are to use the best means for his Removal.

25. You are to give orders forthwith, that every Protestant Minister within your Government, be one of the Vestry in his respective Parish; and that no Vestry be held without him, except in case of Sickness, or, after Notice of a Vestry summoned, he omit to come.

26. And to the end, that the ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government, as far as conveniently may be; We do think fit, that you give all Countenance and Encouragement to the exercise of the same, excepting only the collating to Benefices, granting Licenses for Marriages, and Probates of Wills, which We have reserved to you Our Governor, and to the Commander in Chief of Our said Province for the time being.

27. And We do further direct, that no School-master, who shall arrive in Our said Province from this Kingdom, be henceforward permitted to keep School without the Licence of the said Lord Bishop of London; and that no other Person now there, or that shall come from other Parts, shall be admitted to keep School in your Government without your Licence first obtained.

28. You are to take especial Care, that a Table of Marriages, established by the Canons of the Church of England, be hung up in all places of public Worship according to the Rites of the Church of England.

29. And it is Our further Will and Pleasure, that, in order to suppress, as much as in you lies, every species of Vice and Immorality, You forthwith do cause all Laws already made against Blasphemy, Prophaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's day, Swearing, and Drunkenness, to be vigorously put in execution in every part of your Government; and that you take due Care

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for the punishment of these and every other Vice and Immorality by presentment upon Oath, to be made to the Temporal Courts by the Church Wardens of the several Parishes at proper times of the Year to be appointed for that purpose ; And for the further discouragement of Vice and encouragement of Virtue and good Living, (that by such Examples the Infidels may be invited and perswaded to embrace the Christian Religion,) You are not to admit any Persons to public Trusts and Employments in the Province under your Government, whose ill fame and conversation may occasion Scandal.

30. The Extension of the Limits of the Province of Quebec necessarily calls forth your Attention to a Variety of new Matter and new Objects of Consideration ; The protection and control of the various Settlements of Canadian Subjects, and the regulation of the Peltry Trade in the upper or interior Country on the one hand, and the protection of the Fisheries in the Gulph of S^t Lawrence, and on the Labrador Coast on the other hand, point to Regulations, that require deliberation and despatch.

31. The institution of inferior Judicatures with limited Jurisdiction in Criminal and Civil Matters for the Illinois, Poste S^t Vincenne, the Detroit, Missilimakinac, and Gaspée has been already pointed out, and the Appointment of a Superintendant at each of these Posts is all, that is further necessary for their Civil concerns ; But it will be highly proper, that the Limits of each of those Posts, and of every other in the interior Country should be fixed and ascertained ; and that no Settlement be allowed beyond those Limits ; seeing that such Settlements must have the consequence to disgust the Savages ; to excite their Enmity ; and at length totally to destroy the Peltry Trade, which ought to be cherished and encouraged by every means in your Power.

32. It is Our Royal Intention, that the Peltry Trade of the interior Country should be free and open to all Our Subjects, Inhabitants of any of Our Colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763, obtain Licences from the Governors of any of Our said Colonies for that purpose, under penalties to observe such Regulations, as shall be made by Our Legislature of Quebec for that purpose ; Those Regulations therefore, when established, must be made public throughout all Our American possessions, and they must have for their object the giving every possible facility to that Trade, which the nature of it will admit, and as may consist with fair and just dealing towards the Savages, with whom it is carried on. The fixing stated times and places for carrying on the Trade, and adjusting modes of settling Tariffs of the prices of Goods and Furs, and above all the restraining the Sale of Spirituous Liquors to the Indians will be the most probable and effectual means of answering the ends proposed. These and a variety of other regulations, incident to the nature and purpose of the Peltry Trade in the interior Country, are fully stated in a Plan proposed by Our Commissioners for Trade and Plantations in 1764, a Copy of which is hereunto annexed,[1] and which will serve as a Guide in a variety of cases, in which it may be necessary to make provision by Law for that important Branch of the American Commerce.

33. The Fisheries on the Coast of Labrador, and the Islands adjacent thereto are objects of the greatest Importance, not only on account of the Commodities they produce, but also as Nurseries of Seamen, upon whom the Strength and Security of Our Kingdoms depend.

34. Justice and Equity demand, that the real and actual property and possession of the Canadian Subjects on that Coast should be preserved intirely ; and that they should not be molested or hindered in the exercise of any Sedentary Fisheries they may have established there.

35. Their Claims however extend to but a small District of the Coast, on the greatest part of which District a Cod Fishery is stated to be impracticable.

36. On all such parts of the Coast, where there are no Canadian Possessions, and more especially where a valuable Cod Fishery may be carried on, it will be your Duty to make the Interests of Our British Subjects going out to fish there in Ships fitted

[1] The plan is given below, following these Instructions ; see p. 433.

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out from Great Britain the first object of your care, and, as far as circumstances will admit, to establish on that Coast the Regulations in favour of British fishing Ships, which have been so wisely adopted by the Act of Parliament passed in the Reign of King William the Third "for the encouragement of the Newfoundland Fishery"; and you are on no account to allow any possession to be taken, or sedentary Fisheries to be established upon any parts of the Coast, that are not already private Property, by any persons whatever, except only such as shall produce annually a Certificate of their having fitted out from some Port in Great Britain.

37. We have mentioned to you the Fisheries upon the Coast of Labrador, as the main object of your attention; but the Commerce carried on with Savages of that Coast, and the state and condition of those Savages deserve some regard; The Society of Unitas Fratrum, urged by a laudable Zeal for promoting Christianity, has already, under Our Protection, and with Our Permission, formed Establishments in the Northern parts of that Coast for the purposes of civilizing the Natives, and converting them to the Christian Religion. Their success has been answerable to their Zeal; and it is Our express Will and Pleasure, that you do give them every countenance and Encouragement in your power, and that you do not allow any Establishment to be made, but with their consent, within the limits of their possessions.

38 By Our Commission to you under Our Great Seal of Great Britain you are authorised and impowered, with the advice and consent of Our Council, to settle and agree with the Inhabitants of Our said Province of Quebec for such Lands, Tenements, and Hereditaments, as now are, or shall hereafter be in Our Power to dispose of. It is therefore Our Will and Pleasure, that all Lands, which now are, or hereafter may be subject to Our Disposal, be granted in Fief or Seigneurie, in like manner as was practiced antecedent to the Conquest of the said Province; omitting however in any Grant, that shall be passed of such Lands, the Reservation of any Judicial powers, or privileges whatever. And it is Our further Will and Pleasure, that all Grants in Fief or Seigneurie, so to be passed by you, as aforesaid, be made subject to Our Royal Ratification, or Disallowance, and to a due Registry thereof within a limited time, in like manner as was practised in regard to Grants and Concessions held in Fief and Seigneurie under the French Government.

39. It is Our Will and Pleasure however, that no Grants be made of any Lands, on which there is any considerable growth of white Pines fit for Masting Our Royal Navy, and which lie convenient for water carriage; But that you do cause all such Lands to be set apart for Our Use, and proper regulations made, and penalties inflicted, to prevent trespasses on such Tracts, and the cutting down, or destroying the Trees growing thereon.

40. And whereas it appears from the Representation of Our late Governor of the District of Trois Riviéres that the Iron Works at Saint Maurice in that District are of great consequence to Our Service. It is therefore Our Will and Pleasure, that no part of the Lands, upon which the said Iron Works were carried on, or from which the Ore used in such Works was procured, or which shall appear to be necessary and convenient for that Establishment, either in respect to a free passage to the River Saint Lawrence, or for producing a necessary supply of Wood, Corn, and Hay, or for Pasture for Cattle, be granted to any private person whatever. And also that as large a District of Land, as conveniently may be, adjacent to, and lying round the said Iron Works, over and above what may be necessary for the above purposes, be reserved for Our Use, to be disposed of in such manner as We shall hereafter direct and appoint.

41. And it is Our further Will and Pleasure, that you do consider of a proper and effectual method of collecting, receiving, and accounting for Our Quit rents, whereby all Frauds, Concealments, Irregularity, or neglect therein may be prevented, and whereby the receipt may be effectually checked and controlled. And if it shall appear necessary to pass an Act for the more effectually ascertaining, and the more speedily and regularly collecting Our Quit rents, you are to prepare the heads of such a Bill, as you shall think may most effectually conduce to the procuring the good ends proposed; and to transmit the same to Us by one of Our principal Secretaries of State

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for Our further Directions therein. And you are also to transmit a Duplicate thereof to Our Commissioners for Trade and Plantations for their information.

42. You are to use your best endeavours in improving the Trade of the Province under your Government by settling such Orders and Regulations therein, with the advice of Our said Council, as may be most acceptable to the generality of the Inhabitants; And It is Our express Will and Pleasure, that you do not upon any pretence whatever, upon pain of Our Highest Displeasure, give your assent to any Law or Laws for setting up any Manufactures, and carrying on any Trades, which are hurtful and prejudicial to this Kingdom; and that you do use your utmost endeavours to discourage, discountenance, and restrain any attempts, which may be made to set up such Manufactures, or establish any such Trades.

43. And it is Our Will and Pleasure, that you do not dispose of any Forfeitures or Escheats to any person, until the Sheriff or other proper Officer have made enquiry by a Jury upon their Oaths into the true value thereof; nor until you have transmitted to Our Commissioners of Our Treasury a particular account of such Forfeitures, and Escheats, and the Value thereof; and you are to take care, that the produce of such Forfeitures and Escheats, in case We shall think proper to give you directions to dispose of the same, be duly paid to Our Treasurer or Receiver General of Our said Province; and a full account transmitted to Our Commissioners of Our Treasury, or Our High Treasurer for the time being, with the names of the persons, to whom disposed.

44. And whereas Commissions have been granted unto several persons in Our respective Plantations in America for the trying of Pirates in those parts, pursuant to the Acts for the more effectual suppression of Piracy; and by a Commission already sent to Our Province of New York Our Governor there is impowered, together with others therein mentioned, to proceed accordingly in reference to Our said Province; Our Will and Pleasure is that you do use your best endeavours to apprehend all persons whatever, who may have been guilty of Piracy within your Government, or who, having committed such Crimes at other places, may come within your Jurisdiction, and until we shall think proper to direct the like Commission to be established for Our Government at Quebec, you are to send such Pirates, with what proofs of their Guilt you can procure or collect, to Our Governor of New York, to be tryed and punished under the authority of the Commission established for those parts.

45. And whereas you will receive from Our Commissioners for executing the Office of High Admiral of Great Britain and of Our Plantations a Commission, constituting you Vice Admiral of Our said Province; you are hereby required and directed carefully to put in execution the several powers thereby granted you.

46. Whereas great Inconveniences have happened heretofore by Merchant Ships and other Vessels in the Plantations wearing the Colours borne by Our Ships of War, under pretence of Commissions granted to them by the Governors of the said Plantations, and by trading under those Colours, not only among Our own Subjects, but also those of other Princes and States, and committing divers Irregularities, they may very much dishonour Our Service; For preventing thereof, you are to oblige the Commanders of all such Ships, to which you shall grant Commissions, to wear no other Colours, than such as are described in an Order of Council of the 7th of January 1730, in relation to Colours to be worn by all Ships and Vessels, except Our Ships of War.

47. And whereas there have been great Irregularities in the manner of granting Commissions in the Plantations to private Ships of War, you are to govern yourself, whenever there shall be occasion, according to the Commissions and Instructions granted in this Kingdom; But you are not to grant Commissions of Marque or Reprisal against any Prince or State, or their Subjects in amity with Us to any person whatsoever without Our special Command.

48. Whereas We have been informed, that during the time of War, Our Enemies have frequently got Intelligence of the State of Our Plantations by Letters from private persons to their Correspondents in Great Britain, taken on board Ships coming from the Plantations, which hath been of dangerous consequence; Our Will and

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Pleasure therefore is, that you signify to all Merchants, Planters, and others, that they be very cautious in time of War, whenever that shall happen, in giving any accounts by Letters of the public State and Condition of Our Province under your Government; and you are further to give directions to all Masters of Ships, or other persons, to whom you may entrust your Letters, that they put such Letters into a Bag with a sufficient weight to sink the same immediately, in case of imminent danger from the Enemy: And you are also to let the Merchants and Planters know, how greatly it is for their Interest, that their Letters should not fall into the hands of the Enemy; and therefore that they should give like Orders to Masters of Ships in relation to their Letters; and you are further to advise all Masters of Ships, that they do sink all Letters, in case of danger, in the manner before mentioned.

49. And whereas the Merchants and Planters in Our Plantations in America, have in time of War, corresponded and traded with Our Enemies, and carried Intelligence to them, to the great prejudice and hazard of Our said Plantations; you are therefore by all possible methods to endeavour to hinder such Trade and Correspondence in time of War.

50 Whereas it is absolutely necessary, that We be exactly informed of the State of Defence of all Our Plantations in America, as well in relation to the Stores of War, that are in each Plantation, as to the Forts and Fortifications there, and what more may be necessary to be built for the Defence and Security of the same; you are as soon as possible to prepare an account thereof with relation to Our said Province in the most particular manner; and you are therein to express the present State of the Arms, Ammunition, and other Stores of War belonging to the said Province, either in public Magazines, or in the hands of private persons, together with the State of all places either already fortified, or that you judge necessary to be fortified for the Security of Our said Province; and you are to transmit the said accounts to Us by one of Our principal Secretaries of State, and also Duplicates thereof to Our Commissioners for Trade and Plantations, for their information, and also a Duplicate thereof to Our Master General, or principal Officers of Our Ordinance, which accounts are to express the particulars of Ordinance, Carriages, Balls, Powder, and other sorts of Arms and Ammunition in Our public Stores, and so from time to time of what shall be sent to you, or bought with the public Money; and to specify the time of the disposal, and the occasion thereof; And you are half yearly to transmit a general account of the State of the Fortifications and Warlike Stores specified in the manner above mentioned.

51. And in case of any Distress of any other of Our Plantations, you shall, upon application of the respective Governors thereof unto you, assist them with what aid the condition and safety of Our Province under your Government can spare.

52. If any thing shall happen, which may be of advantage or security to Our Province under your Government, which is not herein, or by your Commission provided for, We do hereby allow unto you, with the advice and consent of Our Council, to take order for the present therein, giving unto Us, by one of Our principal Secretaries of State, speedy notice thereof, that you may receive Our Ratification, if We shall approve the same; Provided always, that you do not by colour of any power or authority hereby given you, commence or declare War without Our Knowledge and particular Commands therein; and you are also to transmit a Duplicate of such notice, as aforesaid, to Our Commissioners for Trade and Plantations for their information.

53. And whereas We have by the first article of these Our Instructions to you directed and appointed, that your chief Residence shall be at Quebec, you are nevertheless frequently to visit the other parts of your Government, in order to inspect the management of all public affairs, and thereby the better to take care, that the Government be so administered, that no disorderly practices may grow up contrary to Our Service and the welfare of Our Subjects.

54. And whereas great prejudice may happen to Our Service, and the security of the Province by your absence from those parts, you are not upon any pretence whatsoever to come into Europe without having first obtained leave for so doing from

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Us under Our Sign Manual and Signet, or by Our Order in Our Privy Council; Yet nevertheless, in case of Sickness, you may go to South Carolina, or any other of Our Southern Plantations, and there stay such a space of time, as the recovery of your Health may absolutely require.

55. And whereas We have thought fit by Our Commission to direct, that, in case of your death, or absence from Our said Province, and in case there be at that time no person within Our said Province commissionated or appointed by Us to be Our Lieutenant Governor, or Commander in Chief, that the eldest Councillor, being a natural born Subject of Great Britain, Ireland, or the Plantations, and professing the Protestant Religion, who shall be at the time of your death or absence residing within Our said Province under your Government, shall take upon him the administration of Government, and execute Our said Commission, and Instructions, and the several powers and authorities therein directed; It is nevertheless Our express Will and Pleasure, that in such case the said President shall forbear to pass any Act or Acts, but what are immediately necessary for the Peace and Welfare of the said Province, without Our particular Order for that purpose.

56. And whereas We are desirous, that a proper provision should be made for the support of Our Government within Our said Province of Quebec, We do therefore hereby declare it to be Our Royal Intention, that the following annual Salaries and Allowances be discharged and paid out of any Revenues arising to Us within the same, or out of such other Monies, as shall be granted or appropriated to the Uses and Services of Our said Province of Quebec, that is to say,

	£	s.	d.
To the Governor p Annum	2,000	„	„
To the Lieutenant Governor	600	„	„
To the Chief Justice	1,200	„	„
To six Judges of Common Pleas, £500 each	3,000	„	„
To the Attorney General	300	„	„
To the Clerk of the Crown and Pleas	100	„	„
To two Sheriffs at £100 each	200	„	„
To the Secretary and Register	400	„	„
To the Clerk of the Council	100	„	„
To the Surveyor of Lands	300	„	„
To the Surveyor of Woods	200	„	„
To the Commissary for Indians	300	„	„
To the Captain of the Port	100	„	„
To the Naval Officer	100	„	„
To the Receiver General of the Revenues	400	„	„
To twenty-three Councillors at £100 each	2,300	„	„
To the Lieutenant Governors or Superintendants			
At the Illinois, Poste Saint Vincenne, Detroit, Missilimakinac, Gaspée — at £200 each	1,000	„	„
To one Judge of the inferior Courts of King's Bench and Common Pleas at each of the above five Posts at £100 each Judge	500	„	„
To an Assistant or Assessor at each Post at £50 p Annum	250	„	„
To a Sheriff at each District at £20 p Annum each	100	„	„
To a Grand Voyer	200	„	„
To a French Secretary	200	„	„
To four Ministers of the Protestant Church at £200 p. Ann. each	800	„	„
To two Schoolmasters at £100 p Annum each	200	„	„
To an Allowance to the Person licenced to superintend the Romish Church	200	„	„
To Pensions to the Officers of a Corps of Canadians employed in the last War, and discharged without any Allowance, as follows, Viz[t]			
To Mons[r] Rigauville, the Commandant of said Corps	200	„	„
To five Captains £100 each	500	„	„
To ten Lieutenants £50 each	500	„	„
To the Commandant of the Savages	100	„	„
To Annual contingent Expenses	1,000	„	„
	£ 17,350	„	„

All which Salaries and Allowances are to commence on, and be payable from, and after the first day of May next ensuing.[1]

[1] Among the Dartmouth Papers is an "Estimate of the Expence of the Civil Establishment of the Province of Quebec, and Its Dependencies." M 386, p. 494. In this a number of the salaries are rated at

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57. And whereas We are further willing in the best manner to provide for the support of the Government of Our said Province, by setting apart a sufficient Allowance to such, as shall be Our Lieutenant Governor, Commander in Chief, or President of Our Council for the time being within the same; Our Will and Pleasure therefore is, that, when it shall happen, that you shall be absent from Our said Province, one full Moiety of the Salary, and of all Perquisites and Emoluments whatsoever, which would otherwise become due unto you, shall, during the time of your absence from Our said Province, be paid and satisfied unto such Lieutenant Governor, Commander in Chief, or President of Our Council, who shall be, resident upon the place for the time being, which We do hereby order and allot unto him towards his Maintenance, and for the better Support of the Dignity of that Our Government.

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PLAN FOR THE FUTURE MANAGEMENT OF INDIAN AFFAIRS, REFERRED TO IN THE THIRTY SECOND ARTICLE OF THE FOREGOING INSTRUCTIONS.

1. That the Trade and Commerce with the several Tribes of Indians in North America under the protection of His Majesty shall be free and open to all His Majesty's subjects, under the several Regulations and Restrictions hereafter mentioned, so as not to interfere with the Charter to the Hudson's Bay Company.

2. That for the better Regulation of this Trade, and the Management of Indian Affairs in general, the British Dominions in North America be divided into two Districts, to comprehend and include the several Tribes of Indians mentioned in the annexed Lists A. and B.

3. That no Trade be allowed with the Indians in the southern District, but within the Towns belonging to the several Tribes included in such District; and that in the Northern District the Trade be fixed at so Many Posts, and in such Situations, as shall be thought necessary.

4. That all Laws, now in Force in the several Colonies for regulating Indian Affairs, or Commerce, be repealed.

5. That there be one general Agent or Superintendant appointed by His Majesty for each District.

6. That the Agent or Superintendant for the Northern District shall be allowed three Deputies to assist him in the Administration of Affairs within his District; and that the Agent or Superintendant for the Southern District shall be allowed two Deputies.

7. That there shall be a Commissary, Interpreter, and Smith, appointed by His Majesty to reside in the Country of each Tribe in the Southern District, and at each Post in the Northern District.

8. That it be recommended to the Society for the propagation of the Gospel in foreign parts to appoint four Missionaries in each District, to reside at such places, as the Agent or Superintendant for each District shall recommend.

9. That the Commissaries, Interpreters, and Smiths in each District do Act under the immediate Direction and Orders of the Agent or Superintendant, who shall have a power of Suspending them in Case of Misbehaviour, and, in Case of Suspension of a

different amounts from those here given. Among the variations are the following—Lt. Governor, £800, Chief Justice, £1,000; the six Judges, £300 each, Commissary for Indians, £200. There are two additional offices, Judge of the Admiralty, £200, Register of the Court of Admiralty, £100. There was no provision for Schoolmasters, or for Contingent Expenses. From another document we find that the appointments to these positions were divided between Lord Dartmouth, the Treasury Board, and the Governor, as follows,—

"*Lord Dartmouth*—Lt. Governor, Chief Justice, Secry & Register, 3 Judges, Attorney Gen^l^, Clerk of Crown, Commissary for Indian Affairs, Naval Officers, 5 Superintend^ts^, 4 Ministers, 2 Schoolmasters.

Treasury—Surveyor of Lands, D^o^ of Woods, Receiv^r^ Gen^l^.

Governor—Clerk of Council, Captain of ye Port, 2 Sheriffs, 5 Judges, 5 Assessors, 5 Sheriffs, Grand Voyer, ffrench Secretary." M 385, p. 492.

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Commissary, or of a Vacancy by Death, or Resignation, the Office shall be executed, until the King's pleasure is known, by one of the Deputies to the Agent or Superintendant.

10. That the said Agent or Superintendant shall have the Conduct of all public Affairs relative to the Indians; and that neither the Commander in Chief of His Majesty's Forces in America, nor any of the Governors and Commanders in Chief of any of the Colonies, or persons having military Commands in any of the Forts within each of the said Districts, do hold any General Meetings with the Indians, or send any public Talks to them without the Concurrence of the Agent or Superintendant, unless in cases of great Exigency, or when the said Agent or Superintendant may be in some remote part of his District.

11. That the said Agents or Superintendants do in all Affairs of political consideration, respecting peace and war with the Indians, purchases of Lands, or other Matters, on which it may be necessary to hold any general Meetings with the Indians, advise and act in concert with the Governors, (or the Governors and Councils, as the Occasion may require), of the several Colonies within their respective Districts; And that the said Agents or Superintendants shall be Councillors extraordinary within each Colony in their respective Districts, in like manner as the Surveyors General of the Customs for the Northern and Southern Districts of America.

12. That the Governor or Commander in Chief of every Colony be directed to communicate to the Agent or Superintendant of that District, within which his Government lyes, all such Information and Intelligence, as he may receive respecting Indian Affairs; And that the Agents or Superintendants shall in like manner communicate to the Governors all Intelligence and Information, respecting the State of Indian Affairs, which may in any wise regard the Security and Interest of the said Colonies.

13. That no Order shall be issued by the Governor or Commander in Chief of any of His Majesty's Colonies, or by any Officer having Military Command in any Forts within the Indian Country, for stopping the Trade with any Tribe of Indians in either of the said Districts, without the Concurrence and Consent of the Agent or Superintendant for Indian Affairs.

14. That the said Agents or Superintendants shall by themselves, or sufficient Deputies visit the several Posts or Tribes of Indians within their respective Districts once in every year, or oftener, as Occasion shall require, to enquire into, and take an Account of the Conduct and Behaviour of the subordinate Officers at the said Posts, and in the Country belonging to the said Tribes; to hear Appeals; and redress all Complaints of the Indians; make the proper Presents; and transact all Affairs relative to the said Indians.

15. That for the maintaining peace and good Order in the Indian Country, and bringing Offenders in criminal Cases to due Punishment, the said Agents or Superintendants, as also the Commissaries at each Post, and in the Country belonging to each Tribe, be empowered to Act as Justices of the Peace in their respective Districts and Departments, with all powers and priviledges vested in such Officers in any of the Colonies; and also full power of Committing Offenders in Capital Cases, in order that such Offenders may be prosecuted for the same; And that, for deciding all civil actions, the Commissaries be empowered to try and determine in a Summary way all such Actions, as well between the Indians and Traders, as between one Trade and another, to the Amount of Ten Pounds Sterling, with the Liberty of Appeal to the Chief Agent or Superintendant, or his Deputy, who shall be empowered upon such appeal to give Judgement thereon; which Judgement shall be final, and process issue upon it, in like manner as on the Judgement of any Court of Common Pleas established in any of the Colonies.

16. That for the easy attainment of Justice, the evidence of Indians, under proper Regulations and Restrictions, be admitted in all Criminal as well as civil causes, that shall be tried and adjudged by the said Agents or Superintendants, or by the said Commissaries; and that their Evidence be likewise admitted by the Courts of Justice in any of His Majesty's Colonies or Plantations in Criminal cases, Subject to the same Pains and Penalties in Cases of false Evidence, as His Majesty's Subjects.

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17. That the said Agents or Superintendants shall have power to Confer such Honors and Rewards on the Indians, as shall be necessary; and of granting Commissions to principal Indians in their respective Districts to be War Captains or Officers of other Military Distinctions.

18. That the Indians of each Town in every Tribe in the Southern District shall choose a beloved Man to be approved of by the Agent or Superintendant for such District, to take care of the Mutual Interests both of Indians and Traders in such Town; and that such beloved Men, so elected and approved in the several Towns, shall elect a Chief for the whole Tribe, who shall constantly reside with the Commissary in the Country of each Tribe, or occasionally Attend upon the said Agent or Superintendant, as Guardian for the Indians and Protector of their Rights, with Liberty to the said Chief to be present at all Meetings and upon all Hearings or Trials relative to the Indians before the Agent or Superintendant, or before the Commissaries; and to give his Opinion upon all Matters under Consideration at such Meetings or Hearings.

19. That the like Establishments be made for the Northern District, as far as the Nature of the Civil Constitution of the Indians in this District, and the Manner of Administering civil affairs will admit.

20. That no person having any Military Command in the Indian Country shall be capable of Acting as Commissary for the Affairs of the Indians; in either of the above mentioned Districts respectively; nor shall such person having military Command be allowed to carry on trade with the Indians, or to interpose his Authority in any thing, that regards the Trade with, or civil Concerns of the Indians; but to give the Commissary or other Civil Magistrate all Assistance in his power, whenever thereunto required.

21. That the said Commissaries shall keep exact and regular Accounts, by way of Journal, of all their Transactions and Proceedings, and of all Occurrences in their respective Departments, and shall by every opportunity communicate such Transactions and Occurrences to the Agent or Superintendant in their respective Districts; which Agent or Superintendant shall regularly by every Opportunity correspond with the Commissioners for Trade and Plantations.

22. That the Agent or Superintendant, to be appointed for each District, as also the Commissaries residing at the Posts, or in the Indian Country within each District, shall take an Oath before the Governor or Chief Judge of any of the Colonies within their respective Districts, for the due Execution of their respective Trusts; and they and all other subordinate Officers, employed in the Affairs of the Indians, shall be forbid, under proper Penalties, to carry on any Trade with them, either upon their own Account, or in Trust for others, or to make any Purchase of, or accept any Grants of Lands from the Indians.

23. That for the better regulation of the Trade with the said Indians, conformable to their own Requests, and to prevent those Frauds and Abuses, which have been so long and so loudly complained of in the manner of carrying on such Trade, all Trade with the Indians in each District be carried on under the Direction and Inspection of the Agents or Superintendants, and other subordinate Officers to be appointed for that purpose, as has been already mentioned.

24. That all Persons intending to trade with the Indians shall take out Licences for that purpose under the Hand and Seal of the Governor or Commander in Chief of the Colony, from which they intend to carry on such Trade, for every of which Licences no more shall be demanded or taken than two Shillings.

25. That all persons taking out Licences shall enter into Bond to His Majesty, His Heirs, and Successors in the Sum of with one Surety in the Sum of for the due observance of the Regulations prescribed for the Indian Trade.

26. That every Person willing to give Security, and finding a Security willing, if required, to take an Oath, that he is possessed of property to double the Value of the Sum he stands security for, shall be intitled to a Licence.

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27. That every such Licenced Trader shall at the time of taking out the Licence, declare the Post or Truck house, at which or the Tribe of Indians with which he intends to trade, which shall be specified in the Licence itself.

28. That no Licence be granted to continue longer than for one Year.

29. That no Person trade under such Licence, but the person named in it, his Servants, or Agents, whose Names are to be inserted in the Margents; and in Case any of the Servants or Agents named in such Licence shall die, or be discharged, the same shall be notified to the Governor, by whom the Licence was granted, or to the Commissary of the Post, or in the Tribe, where such Trader carries on Trade, to the end that the Name or Names of any other Servants or Agents, employed by the said Trader in the place of those dead or discharged, may in like manner be inserted in the Margent of the Licence.

30. That all Licences be entered in the Secretary's Office, or other proper Office of Record in each Colony, where they are taken out; for which Entry no more shall be demanded or taken than Six pence for each Licence; and all persons to have free Liberty to inspect such Entry, paying a Fee of Sixpence for the same.

31. That Persons trading with the Indians without a Licence, and without giving the Security above required, or trading at any other Posts or places, than those expressed in their Licences, do forfeit all the Goods they shall be found then trading with, and also pay a Fine of to His Majesty, His Heirs, and Successors, and suffer Months Imprisonment.

32. That all Traders immediately upon Arrival at the posts or Truck houses in the Northern district, or in the Tribes in the Southern district, for which Licences have been taken out, and before any Goods are sold to, or bartered with the Indians, do produce such Licences to the Commissaries appointed for the Direction and Inspection of the Trade at such posts, or Truck houses, or in such Tribes.

33. That all Trade with the Indians shall be carried on by Tariffs, to be settled and Established from time to time by the Commissaries at the several Posts, or Truck houses, or in the Countries belonging to the several Tribes in Concert with the Traders and Indians.

34. That the Commissaries appointed to direct and inspect the Trade at each Truck house in the Northern District, shall be empowered to fix and prescribe Limits round each Post or Truck house, within which Limits all Trade with the Indians may be commodiously carried on in the most public Manner.

35. That all Traders have free Liberty to erect Hutts and Warehouses within such Limits, in such Order and Manner as the Commissary shall, with the concurrence of the Officer Commanding at such Post, Direct and appoint.

36. That no Trader shall Traffic, or have any Dealings with the Indians without the Limits prescribed by the Commissary or other Chief Officer appointed for the Inspection and Direction of the Trade.

37. That each Truck house or post of Trade in the Northern District be fortified and garrisoned; and that all Traders have free Liberty to retire into such Garrison with their Effects, when ever any Disturbance shall Arise, or the Commissary at such post shall represent it to be necessary.

38. That no Trader shall sell or otherwise supply the Indians with Rum, or other spirituous Liquors, Swan Shot, or rifled Barrelled Guns.

39. That in Trade with the Indians no Credit shall be given them for Goods in Value beyond the Sum of fifty Shillings; and no Debt beyond that Sum shall be recoverable by Law or Equity.

40. That all Disputes concerning Weights or Measures in the buying or selling Goods shall be decided by Standard Weights and Measures, to be kept in each Post or Truck-house in the Northern District, and in each Tribe in the Southern District.

41. That no private person, Society, Corporation, or Colony be capable of acquiring any Property in Lands belonging to the Indians, either by purchase of, or Grant, or Conveyance from the said Indians, excepting only where the Lands lye within the Limits of any Colony, the soil of which has been vested in proprietors, or Corporations by Grants from the Crown; in which Cases such Proprietaries or Corporations only shall be capable of acquiring such property by purchase or Grant from the Indians.

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42. That proper Measures be taken, with the Consent and Concurrence of the Indians, to ascertain and define the precise and exact Boundary and Limits of the Lands, which it may be proper to reserve to them, and where no Settlement whatever shall be allowed.

43. That no purchases of Lands belonging to the Indians, whether in the Name and for the Use of the Crown, or in the Name and for the Use of proprietaries of Colonies be made but at some general Meeting, at which the principal Chiefs of each Tribe, claiming a property in such Lands, are present; and all Tracts, so purchased, shall be regularly surveyed by a Sworn Surveyor in the presence and with the Assistance of a person deputed by the Indians to attend such Survey; and the said Surveyor shall make an accurate Map of such Tract, describing the Limits, which Map shall be entered upon Record, with the Deed of Conveyance from the Indians.

It is estimated, that the annual Expence of supporting the Establishments, proposed in the foregoing plan, providing presents for the Indians, and other contingent Expences, may amount to about twenty thousand pounds; and it is proposed to defray this Expence by a Duty upon the Indian Trade, either collected upon the Exportation of Skins and Furs, (Beaver excepted,) from the Colonies, or payable by the Traders at the posts and places of Trade, as shall, upon further Examination and the fullest Information, be found most practicable, and least burthensome to the Trade.

A.

List of Indian Tribes in the northern District of North America.

Mohocks.	Powtewatamis.
Oneidas.	Ottawas.
Tuscaroras.	Chipeweighs, or Missisagis.
Onondagas.	Meynomenys.
Cayugas.	Folsavoins.
Senecas.	Puans.
Oswegachys.	Sakis.
Nanticokes.	Foxes.
Conoys.	Twightwees.
Tuteeves.	Kickapous.
Saponeys.	Mascoutens.
Caghnawagas.	Piankashaws.
Canassadagas.	Wawiaghtonos.
Arundacks.	Keskeskias.
Algonkins.	Illinois.
Abenaquis.	Sioux.
Skaghquanoghrônos.	Micmacs.
Hurons.	Norwidgewalks.
Shawanese.	Arseguntecokes.
Delawares.	Penobscots.
Wiandots.	St John's.

B.

List of Indian Tribes in the southern District of North America.

Cherokees.	Attucapas.
Creeks.	Bayugtas.
Chickasaws.	Tunicas.
Chactaws.	Peluches.
Catawbas.	Ofugulas.
Beluxis.	Querphas.

Endorsed: Drt

Instructions for Guy Carleton Esqr Govr of Quebec, Dated 3d Jany 1775.

In Order of Council of 28th Decemr 1774.

George R

C.O..

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INSTRUCTIONS RELATING TO TRADE AND NAVIGATION.[1]

(Instructions 1774-1778.)

4

[L.S.] Orders and Instructions to Our Trusty and Well beloved Guy Carleton Esquire Our Captain General and Governor in Chief in and over Our Province of Quebec in America, In pursuance of several Laws relating to the Trade and Navigation of this Kingdom of Great Britain and our Colonies and Plantations in America, Given at Our Court at S^t James's the Third Day of January 1775. In the Fifteenth year of Our Reign.—

First You shall inform yourself of the principal Laws relating to the Plantation Trade, and shall take a solemn Oath to do your utmost that all the Clauses, Matters, and Things contained in all Acts of Parliament now in force, or that hereafter shall be made relating to Our Colonies or Plantations be punctually and bonâ fide observed according to the true intent and meaning thereof

2^d And whereas, by an Act made in the Seventh and Eighth Years of the Reign of King William the Third, intituled "An Act for preventing Frauds, and regulating "abuses in the Plantation Trade" the Officers appointed for the performance of certain things mentioned in an Act passed in the fifteenth year of the Reign of King Charles the Second, intituled "An Act for the encouragement of Trade" commonly known by the Name of the Naval Officers, are to give security to the Commissioners of Our Customs in Great Britain for the Time being, or such as shall be appointed by them, for Our use, for the true and faithful performance of their duty, you, shall take care, that the said Naval Officers do give such Security to the said Commissioners of Our Customs or the Persons appointed by them, who are impowered to take the same in the manner thereby enjoined, and that he or they produce to you a certificate from them, of his, or their having given Security pursuant to a Clause in the said Act, and you are not to admit any Person to act, as Naval Officer who does not within two Months, or as soon as conveniently may be, after he has enter'd upon the execution of his Office, produce a Certificate of his having given such Security as aforesaid.

3^d And whereas it is necessary for the more effectual dispatch of Merchants and others, that the Naval Officers and the Collectors of the Customs should reside at the same Ports or Towns, you are therefore to take care, that this regulation be observed,* and to consult with the Surveyor General of Our Customs, in what place it may be most convenient to have the Custom-House fixed in part of his District; and to take Care, that the Collector and Naval Officer reside within a convenient Distance of the Custom-House for the Dispatch of Business.

4. Whereas by the Act for the encouraging and increasing of Shipping and Navigation passed in the twelfth year of the reign of King Charles the Second, no Goods or Commodities whatsoever are to be imported into, or exported out of any of Our Colonies or Plantations in any other ships or Vessels whatsoever, but in such as do truly and without Fraud belong only to Our People of Great Britain, or Ireland, or are of the Built of, and belonging to any of Our Lands, Islands, or Territories, as the Proprietors and right Owners thereof, and whereof the Master and three fourths of the Mariners at least are British under the Penalty of the forfeiture and loss of all the Goods and Commodities, which shall be imported into, or exported out of any of the said Places in any other Ship or Vessel, as also of the Ship or Vessel with her Guns, Furniture &c: And whereas by a Clause in the Act for preventing Frauds, and regulating Abuses in the Customs passed in the thirteenth and fourteenth years of the the reign of King Charles the Second, no foreign built Ship, that is to say, not built

*This addition to the 3^d Article found in the Trade Instructions to Carleton 1768. Privy Council Office Plantation Book 1767-1771.

[1] Canadian Archives, M. 230, p. 177. These Instructions were furnished to all the Colonial Governors and contain a summary of the famous Navigation Acts, which express the essence of the whole Colonial System of the time, and show how limited, in point of law at least, was the outlet for the colonies even in regard to inter-colonial, not to mention foreign intercourse.

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in any of Our Dominions of Asia, Africa, and America shall enjoy the Privilege of a Ship belonging to Great Britain or Ireland, although owned and manned by British Subjects, (excepting such Ships only as shall be taken at Sea by Letters of Mart, or Reprizal, and Condemnation thereof made in Our Court of Admiralty as lawful Prize,) but all such Ships shall be deemed as Aliens Ships, and be liable to all duties that Aliens Ships are liable to by Virtue of the aforesaid Act, for the encouraging and increasing of Shipping and Navigation: And whereas by a Clause in the Act for preventing Frauds and regulating Abuses in the Plantation Trade, it is enacted that no Goods or Merchandizes whatsoever shall be imported into or exported out of any of Our Colonies or Plantations in Asia, Africa, or America, or shall be laden in, or carried from any one Port or place in the said Colonies or Plantations to any other Port or Place in the same, or to Our Kingdom of Great Britain in any Ship or Bottom but what is or shall be of the Built of Great Britain, or Ireland, or of the said Colonies or Plantations, and wholly owned by the People thereof, or any of them, and navigated with the Master and three fourths of the Mariners of the said Places only, except such Ships only, as shall be taken as Prize, and Condemnation thereof made in One of the Courts of Admiralty in Great Britain, Ireland, or the said Plantations to be navigated by the Master and three fourths of the Mariners British, or of the said Plantations as aforesaid, and whereof the Property does belong to British Subjects, on pain of forfeiture of Ship and Goods; And whereas by another Clause in the said Act for the more effectual prevention of Frauds, which may be used by colouring foreign Ships under British Names: It is further enacted, that no Ship or Vessel whatsoever shall be deemed or pass as a Ship of the Built of Great Britain, Ireland, Guernsey, Jersey, or any of Our Plantations in America, so as to be qualified to trade to, from, or in any of the said Plantations, until the Person or Persons claiming property in such Ship or Vessel shall register the same in manner thereby appointed: You shall take care and give in charge that these Matters and things be duely observed within Our said Province under your Government according to the true intent and meaning of the said Acts & the Offences & Offenders prosecuted according to the directions thereof, and where it is required, that the Master and three fourths of the Mariners be British: You are to understand, that the true intent and meaning thereof is, that they shall be such during the whole Voyage unless in case of Sickness, Death, or being taken Prisoners in the Voyage to be proved by the Oath of the Master or other Chief Officer of the Ship, and none but Our Subjects of Great Britain, Ireland, or the Plantations are to be accounted British.

5. Whereas, by the said Act of Navigation, as the same stands amended and altered by the aforesaid Act for regulation of the Plantation Trade, it is enacted that for every Ship or Vessel, which shall set Sail out of, or from Great Britain for any British Plantation in America, Asia, or Africa, sufficient Bond shall be given with one Surety to the chief Officer of the Customs of such Port or Place, from whence the said Ship shall set Sail, to the value of One thousand Pounds if the Ship be of less burthen, than one hundred Tons, and of the Sum of two thousand Pounds, if the Ship shall be of greater Burthen: That in case the said Ship or Vessel shall load any of the Commodities therein enumerated, Viz[t] Sugar, Tobacco, Cotton Wool, Indigo, Ginger, Fustick or other dying Wood, of the growth, production, or Manufacture of any British Plantation in America, Asia, or Africa, at any of the said British Plantations, the said Commodities shall by the said Ship be brought to some Port of Great Britain, and be there unladen and put on Shore, the danger of the Seas only excepted; and for all Ships coming from any Port or Place to any of the aforesaid Plantations which by this Act are permitted to trade there, that the Governors of such British Plantations shall before the said Ship or Vessel be permitted to load on board any of the said Commodities, take Bond in manner and to the value aforesaid for each respective Ship or Vessel, that such Ship or Vessel shall carry all the aforesaid Goods, that shall be laden on board the said Ship or Vessel, to some other of the said British Plantations, or to Great Britain; and that every Ship or Vessel which shall load or take on board any of the aforesaid Goods, until such Bond be given to the said Governor, or Certificate produced from the Officers of any Custom House of Great Britain, that such Bond hath there been duly given, shall be forfeited with her Guns,

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Tackle, Apparel, and Furniture, to be employed and recovered, as therein is directed: And whereas by two Acts passed in the Third & Fourth years of the Reign of Queen Anne, the one intituled, "An Act for the encouraging the importation of Naval "Stores from Her Majesty's Plantations in America," and the other an Act for granting to Her Majesty "a further Subsidy on Wines and Merchandizes imported;" And by two other Acts passed in the Eighth year of the reign of King George the first, the one intituled "an Act, for the encouragement of the Silk Manufactures of "this Kingdom, and for taking off several duties on Merchandizes exported, and for "reducing the Duties upon Beaver Skins, Pepper, Mace, Cloves, and Nutmegs im-"ported, and for importation of all Furs of the product of the British Plantations "into this Kingdom only" the other intituled "An Act to prevent the clandestine running of Goods &c and to subject Copper Ore of the production of the British Plantations to such Regulations as other enumerated Commodities of the like production are subject continued by An Act passed in the Eighth year of His said late Majesty's Reign; and still in force, all Rice (except under the Regulations prescribed in the Acts of the third year of His late Majesty's Reign, and the fourth and fifth years of our Reign, Molasses, Furs, Hemp, Pitch, Tar, Turpentine, Masts, Yards, Bowsprits, and Copper Ore, and by An Act passed, in the fourth year of Our Reign, all Coffee, Pimento, Cocoa Nuts, Whale Fins, Raw Silk, Hides, and Skins, Pot, and Pearl Ashes of the growth, production, or Manufacture of any British Colony or Plantation in America, under the like Securities and Penalties restrained to be imported into this Kingdom as the other above mentioned enumerated Commodities, And whereas by an Act passed in the fifth year of Our Reign, intituled "An Act for more effectually "preventing the Mischiefs arising to the Revenue and Commerce of Great Britain and "Ireland from the illicit and clandestine Trade to, and from the Isle of Man" no Rum or other Spirits shall be shipped or laden in any British Colony or Plantation in America, but on condition that the same shall not be carried to, or landed in the Isle of Man, under the like Securities, Penalties, and Forfeitures; And whereas by another Act made in the Sixth year of Our Reign, intituled "An Act for opening and establish-"ing certain Ports in the Islands of Jamaica, and Dominica, for the more free im-"portation and exportation of certain Goods and Merchandizes, for granting certain "Duties to defray the expences of opening, maintaining, securing, and improving such "Ports, for ascertaining the duties to be paid upon importation of Goods from the said "Island of Dominica into this Kingdom, and for securing the Duties upon Goods "imported from the said Island into any other British Colony" all Wool, Cotton-Wool, Indigo, Cochineal, Fustick, and all manner of dying Drugs, or Woods, Drugs used in Medicine, Hairs, Furs, Hides and Skins, Pot and Pearl Ashes, Whalefins, and Raw Silk, of the growth and produce of any foreign Colony, or Plantation, shall upon the exportation thereof from either of the said Islands of Dominica or Jamaica, be imported from thence directly into Great Britain, under the like Securities, Penalties, and Forfeitures, and by the said Act of the sixth year of Our Reign, no Goods whatever shall, or may be exported from the said Island of Dominica, to any Port of Europe to the northward of Cape Finisterre, except to Great Britain, and such Goods shall be there landed under the same Securities, Regulations and restrictions and subject to the like Penalties and Forfeitures, you are therefore to take particular Care, and give the necessary directions that the true intent and meaning of all the said Acts be strictly and duly complied with.

6. You shall carefully examine all Certificates which shall be brought to you of Ships giving Security in this Kingdom to bring their Lading of Plantation Goods hither, as also Certificates of having discharged their Ladings of Plantation Goods in this Kingdom, pursuant to their Securities; And whereas the better to prevent any of the aforesaid Certificates from being counterfeited, the Commissioners of Our Customs have thought fit to sign the same, It is therefore Our Will and Pleasure, that no such Certificates be allowed of, unless the same be under the hands and Seals of the Customer, Comptroller, and Collector of the Customs in some Port in this Kingdom or two of them, as also under the hands of four of the Commissioners of the Customs at London, or three of Our Commissioners of the Customs at Edinburgh,

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and where there shall be reasonable ground of Suspicion, that the Certificate of having given Security in this Kingdom is false and counterfeit, in such case, you or the Person or Persons appointed under you shall require and take sufficient Security for the discharge of the Plantation Lading in this Kingdom, and where there shall be cause to suspect that the Certificate of having discharged the Lading of Plantation Goods in this Kingdom is false and counterfeit, you shall not cancel or vacate the Security given in the Plantations, until you shall be informed from the Commissioners of Our Customs in Great Britain, that the Matter of the said Certificate is true; And if any Persons or Persons shall counterfeit, raze, or falsify any such Certificate for any Vessel or Goods, or shall knowingly or wittingly make use thereof, you shall prosecute such Person for the forfeiture of the Sum of five hundred Pounds according to the Clause of the aforesaid Act for preventing Frauds, and regulating Abuses in the Plantation Trade; and pursuant to the said Act you shall take care, that in all such Bonds to be hereafter given or taken in the Province under your Government, the Sureties therein named be persons of known residence and ability there, for the value mentioned in the said Bonds, and that the Condition of the said Bonds be within eighteen Months after the Date thereof, the danger of the Seas excepted, to produce a Certificate of having landed and discharged the Goods therein mentioned in One of Our Plantations, or in this Kingdom, otherwise to attest the Copy of such Bonds under your hand and Seal, and to cause Prosecution thereof. And it is Our further Will and Pleasure that you do give Directions to the Naval Officer or Officers not to admit any Person to be Security for another, who has Bonds standing out and undischarged, unless he be esteemed responsible for more than the Value of such Bonds.

7. And you are also to give Directions to the said Naval Officer or Officers to advise with the Collector of the Port or District in taking Bonds, and not to admit any Person to be Security in any Plantation Bond until approved by the said Collector; And whereas Lists of all Certificates, granted in South Britain for the discharge of Bonds given in the Plantations, are every Quarter sent to the Collectors of the Districts, where such Bonds are given, the said Naval Officer or Officers is, or are to take care, that no Bond be discharged or cancell'd by him or them without first advising with the Collector, and examining the said List; to see that the Certificate is not forged or counterfeited; And whereas the Principal Officers of Our Customs in America are directed to examine from time to time, whether the Plantation Bonds be duly and regularly discharged, you are to give directions, that the said Officers be permitted to have recourse to the said Bonds, as well as the Book or Books in which they are or ought to be entered and to examine as well whether due Entry thereof be made, as whether they are regularly taken and discharged, and where it shall appear, that Bonds are not regularly discharged, you are to order that, such Bond be put in Suit.

8. You are to understand that the Payment of the rates and Duties imposed by An Act intituled, "An Act for the encouragement of the Greenland and Eastland "Trades; and for the better securing the Plantation Trade" passed in the twenty fifth Year of the Reign of King Charles the Second, on the several Plantation Commodities therein enumerated doth not give Liberty to carry the said Goods to any other Place, than to some of Our Plantations, or to Great Britain only, and that, notwithstanding the Payment of the said Duties, Bond must be given to carry the said Goods to some of the said Plantations, or to Great Britain, and to no other Place.

9. You shall every three Months, or oftener, or otherwise as there shall be opportunity of Conveyance, transmit to the Commissioners of Our Treasury, or our High Treasurer for the Time being, and to the Commission^rs of Our Customs in London, a list of all Ships and Vessels trading in the said Province according to the Form and Specimen hereunto annexed, together with a List of the Bonds taken, pursuant to the Act passed in the twenty second and twenty third years of King Charles the Second's reign, intituled "An Act to prevent planting Tobacco in England; and "for regulating the Plantation Trade;" and you shall cause Demand to be made of every Master at his clearing of an Invoice of the Contents and Quality of his Lading &c, according to the Form hereunto also annexed, and inclose a Copy thereof by some other Ship, or for want of such Opportunity by the same Ship under Cover, sealed, and

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directed to the Commissioners of Our Treasury, or Our High Treasurer for the Time being, and to the Commissioners of Our Customs in London, and send another Copy of the said Invoice in like manner to the Collector of that Port, in this Kingdom for the Time being, to which such Ship shall be said to be bound.

10. Whereas by the aforesaid Act for the Encouragement of Trade, no Commodities of the Growth, Production, or Manufacture of Europe, except Salt for the Fishery of New England and Newfoundland, Wines of the growth of y[e] Madeira's or Western Islands or Azores, Servants and Horses from Ireland and all sorts of Victuals of the growth and production of Ireland, and salt to the Provinces of Pennsylvania, New-York, Nova Scotia, and Quebec, in pursuance of five Acts passed in the Thirteenth year of the reign of King George the First, in the Third year of His late Majesty's reign, and in the Second, Fourth and Sixth years of Our Reign, shall be imported into any of Our Colonies or Plantations, but what shall be bonâ fide, and without Fraud Laden and Shipped in Great Britain, and in Ships duly qualified, you shall use your utmost endeavour for the due observation thereof; and if contrary hereunto any Ship or Vessel shall import into our said Province under Your Government any Commodities of the growth, production, or Manufacture of Europe, but what are before excepted, of which due Proof shall not be made, that the same were Shipped or Laden in some port of Great Britain by producing Cocquets or Certificates under the hands and Seals of the Officers of Our Customs in such Port or Place where the same were Laden, such Ship or Vessel and Goods shall be forfeited; and you are to give in Charge, that the same be seized and prosecuted accordingly.

11. And in order to prevent the acceptance of forged Cocquets or Certificates which hath been practised to Our great Prejudice, you are to give effectual Orders, that for all such European Goods as by the said Act are to be shipp'd and laden in Great Britain Cocquets for the same from hence be produced to the Collectors or other Officers of Our Customs in Our aforesaid Province under your Government for the Time being, before the unlading thereof, and you shall give Order that no European Goods be landed but by Warrant from the said Collector in the Presence of an Officer appointed by him, and for the better prevention of Frauds of this Kind you shall take care, that according to the said Act of Trade, no Ship or Vessel shall be permitted to lade or unlade any Goods or Commodities whatsoever, until the Master or Commander thereof shall first have made known to you, or such Officer, or other Person as shall be thereunto authorized and appointed, the arrival of such Ship or Vessel, with her Name, and the Name and Surname of the Master, and hath shown, that she is a Ship duly navigated, and otherwise qualified according to Law, and hath deliver'd to you, or such other Person, as aforesaid, a true, and perfect Inventory of her lading, together with the Place or Places, in which the said Goods were laden, and taken into the said Ship or Vessel, under forfeiture of such Ships and Goods.

12. You shall not make or allow of any laws, Bye Laws, Usages or Customs in Our said Province under your Government, which are repugnant to the Laws herein before mentioned, or any of them or to any other Law already made or hereafter to be made in this Kingdom, so far as such Laws relate to, and mention the said Plantations, but you shall declare all such Laws, Bye Laws, Usages, or Customs in Our said Province under Your Government, which are any wise repugnant to the said Laws, or any of them, to be illegal, null and void, to all intents and Purposes whatsoever.

13. You shall be aiding and assisting to the Collector and other Officers of Our Admiralty, and Customs appointed, or that shall hereafter be appointed by the Commissioners of Our Customs in this Kingdom, by and under the Authority and Direction of the Commissioners of Our Treasury, or Our High Treasurer of Great Britain for the time being, or by Our High Admiral or Commiss[rs] for executing the Office of High Admiral of Great Britain for the Time being, in putting in execution the several Acts of Parliament before mentioned; and you shall cause due Prosecution of all such Persons, as shall any ways hinder or resist any of the said Officers of Our Admiralty or Customs in the performance of their duty. It is likewise our Will and

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Pleasure, and you are hereby required by the first Opportunity to move the Legislative Council of Our said Province that they provide for the expence of making Copies for the principal Officers of Our Customs, in Our said Province for the time being, of all Acts and Papers, which bear any relation to the Duty of their Office; and in the mean time you are to give Orders, that the said Officers for the time being as aforesaid, be allowed a free Inspection in the publick Offices within Your Government of all such Acts and Papers without paying any Fee or Reward for the same.

14. Whereas the Commissioners appointed for collecting the Six Pence per Month from Seaman's Wages for Our Royal Hospital at Greenwich, pursuant to An Act of Parliament passed in the second year of His late Majesty's Reign, intituled "An Act "for the more effectual collecting in Great Britain and Ireland, and other parts of His "Majesty's Dominions the duties granted for the Support of the Royal Hospital at "Greenwich," have given Instructions to their receivers in foreign Ports for their Government therein. It is therefore Our Will and Pleasure, that you be aiding and assisting to the said Receivers in your Government in the due execution of their Trusts.

15. And whereas by an Act passed in the Sixth year of His late Majesty's reign, intituled "An Act for the better securing and encouraging the Trade of His Majesty's "Sugar Colonies in America" and by another Act passed in the fourth year of Our Reign, intituled "An Act for granting certain duties in the British Colonies and "Plantations in America &c[a]" Duties are laid on all Sugar Panales, and several other Species of Goods therein enumerated of the Produce & Manufacture of any of the Plantations, not in Our Dominion, which shall be imported into any Our Colonies or Plantations; notwithstanding which, we are informed, that great Quantities of foreign Sugar, Paneles, and other Goods mentioned in the aforesaid Acts, are clandestinely landed in Our Plantations without Payment of the said Duties. Our Will and Pleasure is, that you be aiding and assisting to the Collectors and other Officers of Our Customs, in Your Government in collecting the said Duties, and seizing all such Goods, as shall be so clandestinely landed, or put on Shore without paym[t] of the Duties, and you shall cause due Prosecution of all such Sugar Pancles, and other Goods, as shall be seized for Non Payment of the Duties, as well as the Persons aiding or assisting in such unlawful Importations, or that shall hinder, resist, or molest the Officers in the due Execution of the said Laws, and you are to observe that Our share of all Penalties and Forfeitures, so recovered is pursuant to the said Act made in the fourth year of Our Reign to be paid into the hands of Our Collector of the Customs at the Port or Place, where the same shall be recovered for Our Use.

16. You shall take care that upon any Actions, Suits, and Informations that shall be brought, commenced or entered in Our said Province under your Government upon any Law or Statute concerning Our Duties, or Ships, or Goods, to be forfeited by reason of any unlawful Importations or Exportations there be not any Jury, but of such as are Natives of Great Britain, or Ireland, or are born in any of Our said Plantations.

17. You shall take care that all places of Trust in the Courts of Law, or in what relates to the Treasury of our said Province under your Government, be in the Hands of Our Native-born Subjects of Great Britain or Ireland or the Plantations.

18. And that there may be no Interruption or Delay in matters of Prosecution and Execution of Justice in Our Courts of Judicature within Our said Province under your Government by the death or removal of any of Our Officers imployed therein until We can be advised thereof, and appoint others to succeed in their Places, you shall make choice of Persons of known Loyalty, Experience, Diligence, and Fidelity to be employed for the purposes aforesaid until you shall have Our Approbation of them or the Nomination of others from hence.

19. You shall from time to time correspond with the Commissioners of Our Customs in London for the Time being, and advise them of all Failures, Neglects, Frauds, and Misdemeanours of any of the Officers of Our Customs in Our said Province under your Governm[t] and shall also advise them, as occasion shall offer, of all occurrences necessary for their Information relating either to the aforesaid Laws

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of Trade and Navigation, or to Our Revenue of Customs and other Duties under their management, both in Great Britain and the Plantations.

20. If you shall discover, that any Persons or their Assigns claiming any Right or Propriety in any Island or Tract of Land in America, by Charter or by Letters Patent shall at any time hereafter, alien, sell or dispose of such Island, Tract of Land, or Propriety other than to Our natural born Subjects of Great Britain, without the Licence or Consent of Us, our Heirs, or Successors signified by Our or their Order in Council first had and obtained, You shall give Notice thereof to Us, and to Our Commissioners of Our Treasury or to Our High Treasurer of Great Britain for the Time being.

21. Whereas by the aforesaid Act for preventing Frauds, and regulating Abuses in the Plantation Trade, it is provided for the more effectual prevention of Frauds which may be used to elude the Intention of the said Act by colouring foreign Ships under British Names; That no Ship or Vessel shall be deemed or pass as a Ship of the Built of Great Britain or Ireland, Guernsey, Jersey, or any of Our Plantations in America, so as to be qualified to Trade to, from, or in any of Our said Plantations until the Person or Persons claiming Property in such Ship or Vessel shall register the same in manner thereby directed, You shall take care that no foreign Built Ships be permitted to pass as a Ship belonging to Our kingdom of Great Britain, or Ireland, until proof be made upon Oath of one or more of the owners of the said Ship before the Collector or Comptroller of Our Customs in such Port to which she belongs or upon like Proof before yourself, with the principal Officer of Our Revenue residing in Our aforesaid Province, under your Government, if such Ships shall belong to the said Province which Oath you, and the Officers of Our Customs respectively are authorized to administer in manner thereby directed, and being attested by you and them so administering the same, and registered in due form according to the specimen hereunto annexed, you shall not fail immediately to transmit a Duplicate thereof to the Commissioners of Our Customs in London in order to be entered in a general register to be there kept for that purpose with Penalty upon every Ship or Vessel trading to, from, or in any of Our said Plantations in America as aforesaid, and not having made Proof of her Built and Property, as by the afore-mentioned Act is directed, and shall be liable to such Prosecution and Forfeiture as any Foreign Ship (except Prize condemned in Our high Court of Admiralty) would for trading with our Plantations, by the said Law be liable unto, with this Proviso, that all such Ships as have been or shall be taken at Sea, by Letters of Marque or Reprizal and Condemnation thereof made in Our High Court of Admiralty as lawful Prize, shall be especially registered, mentioning the Capture and Condemnation instead of the Time and Place of Building, with Proof also upon Oath, that the entire Property is British before any such Prize be allowed the privilege of a British Built Ship according to the meaning of the said Act, And that no Ships Name registered be afterwards changed without registering such Ship de Novo, which by the said Act is required to be done upon any Transfer of Property to another Port, and delivering up the former Certificate to be cancelled, under the same Penalties, and in like Method and in case of any Alteration of Property, in the same Port, by the Sale of one or more Shares in any Ship after registering thereof, such Sale shall always be acknowledged by Endorsement on the Certificate of Register before two Witnesses, in order to prove, that the entire property in such Ship remains to some of Our Subjects of Great Britain, if any Dispute shall arise concerning the same.

22. Whereas by the Act passed in the Twenty first year of His late Majesty's Reign for encouraging the making of Indigo in the British Plantations in America, as the same stands continued & amended by an Act passed in the third year of Our Reign, a premium of four pence p Pound is allowed on the Importation of Indigo of the Growth of the British Plantations; and there are likewise contained in the said Act several Provisions to prevent Frauds, by importing foreign Plantation-made Indigo, or any false Mixtures in what is made in the British Plantations, with a view to recover the said Premium; It is therefore Our Will & Pleasure, that if there now are, or hereafter shall be any Plantations of Indigo within Our said Province under your Government, you do take particular Care, that the said Provisions be duly and punctually complied with, and do likewise from time to time transmit to us, by One of

Our Principal Secretaries of State, an Account of all such Plantations of Indigo, with the Names of the Planters, and the Quantity of Indigo they make, as also the Quantity of such Indigo exported from the said Province, distinguishing the time, when exported, and the Port where shipped, the Names of the Vessels, and the Port, to which bound; and if there be any foreign Indigo imported into the said Province, It is Our further Will & Pleasure, that you do in like manner transmit an Account of such foreign Indigo imported, distinguishing the time when, and the Place from whence imported, together with an Account of such foreign Indigo exported, and the Port where shipped, the Names of the Vessels, and the Port to which bound.

23. Whereas by the Act passed in the tenth year of the Reign of King William the Third, "to prevent the Exportation of Wool out of the Kingdom of Ireland, and "England into foreign Parts, and for the Encouragement of the Woollen Manufactures "in the Kingdom of England," It is amongst other Things, therein enacted, that no Wool, Woolfels, Shortlings, Mortlings, Wool-flocks, Worsted-Bays, or Kerseys, Says, Friezes, Druggets, Cloth Serges, Shalloons, or any other Drapery Stuffs, or Woollen Manufactures whatsoever made or mixed with Wool or Woolflocks, being of the Product or Manufacture of any of the British Plantations in America, shall be laden or laid on board in any Ship or Vessel in any Place or Port within any of the said British Plantations, upon any pretence whatsoever, as also that no such Wool, or other the said Commodities, being of the product or Manufacture of any of the said British Plantations, shall be loaden upon any Horse, Cart, or other Carriage, to the intent & purpose to be exported, transported, carried or conveyed out of the said British Plantations to any other of our Plantations, or to any other place whatsoever, upon the same & like Pains, Penalties & Forfeitures to, and upon all the Offender and Offenders therein, within all and every of Our said British Plantations respectively, as are provided and prescribed by the said Act for the like Offences committed within Our Kingdom of Ireland; You are to take effectual Care, that the true Intent & Meaning thereof, so far forth as it relates to you, be duly put in Execution.

24. In the Act made in the twenty fourth year of His late Majesty's Reign, "for "the more effectually securing the Duties upon Tobacco," there is a Clause to prevent Frauds in the Importation of Bulk-Tobacco, enacting that no Tobacco shall be imported into this Kingdom, otherwise than in *Cask*, *Chest*, or *Case*, containing Four Hundred & fifty Pounds Weight of Tobacco each, under Penalty of the Forfeiture thereof; you shall take care, that this part of the said Act be made publick, that none may pretend Ignorance: and that the true Intent & Meaning thereof be duly put in execution within your Government.

25. And Whereas His Majesty King George the First was informed, that a Clandestine Trade had been carried on, as well by British as foreign Ships from Madagascar, and other Parts beyond the Cape of Bona Esperanza, within the Limits of Trade granted to the united East India Company, directly to Our Plantations in America, to the great Detriment of these Realms, and in breach of the several Laws in force relating to Trade & Navigation, Our Will & Pleasure is, that you, the said Guy Carleton, or in your Absence the Commander in Chief of Our said Province of Quebec for the time being, duly observe and cause to be strictly observed the several Laws & Statutes now in force for the regulating of Trade and Navigation, particularly the several Acts of Parliament already mentioned in your general and these Instructions; and in order to the better Execution of the Laws & Statutes abovementioned, upon the first notice of the Arrival of any Ship or Ships within the Limits of any Port of, or belonging to your Government, which have or are suspected to have on board any Negroes, Goods, or Commodities of the Growth, Produce or Manufacture of the East Indies, Madagascar, or any Parts or Places beyond the Cape of Bona Esperanza, within the Limits of Trade granted to the United East India Company, pursuant to the aforementioned Act of the Ninth & Tenth of King William, you shall immediately cause the Officers of our Customs in your Government, and any other Officers or Persons in aid of them, to go on board such Ship or Ships, and to visit the same, and to examine the Masters or other Commanders, the Officers & Sailors, on board such Ship or Ships, and their Charter Parties, Invoices, Cocquets,

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and other Credentials, Testimonials, or Documents; and if they find, that such Ship or Ships came from the East Indies, Madagascar, or any other Parts or Places beyond the Cape of Bona Esperanza within the Limits of Trade granted to the said united East India Company; and that there are on board any such Goods, Commodities, or Negroes, as abovementioned, that they do give notice to the Master or other Person having then the Command of such Ship or Ships forthwith to depart out of the Limits of your Government, without giving them any Relief, Support, Aid or Assistance, altho' it should be pretended, that such Ship or Ships, were or the same really should be in Distress, Want, Disability, Danger of sinking, or for, or upon any other Reason or Pretence whatsoever, And that you Our Governor or Commander in Chief do by no means suffer any Goods, Merchandize, or Negroes from on board such Ship or Ships to be landed or brought on shore upon any Account or Excuse whatsoever; And it is Our further Will and Pleasure, that, if any such Ship or Ships, being foreign, having on board any such Goods, Merchandize, or Negroes, do not upon notice given to the Master or other Person having the Command thereof, as soon as conveniently may be, depart out of the Limits of your Government, and from the Coasts thereof, without Landing selling or Bartering any of the said Goods, or Negroes, you our Governor or the Commander in Chief for the time being, shall cause the said Ship or Ships, and Goods and Negroes to be seized and proceeded against according to Law; But if such Ship or Ships, having such Goods or Negroes on board, and entering into any Port or Place, or coming upon any of the Coasts or Shores of our said Province under your Government, do belong to Our Subjects, and do break Bulk, or sell, barter, exchange, or otherwise dispose of the said Goods, or Negroes, or any part thereof, contrary to Law; you are to take care, that such Ship or Ships, with the Guns, Tackle, Apparel and Furniture thereof, and all Goods and Merchandize laden thereupon, and the Proceeds and Effects of the same be immediately seized; and that the Laws in such case made and provided be put in execution with the greatest Care, Diligence, and Application; But if any Ship belonging to the Subjects of any foreign State or Potentate, having on board any Negroes, or East India Commodities, shall be actually bound to some Place or Port in the West Indies belonging to any foreign Prince or State, from some European Port, and such Ship shall happen to be driven in by necessity, and be in real Distress, the same may be supplied with what is absolutely necessary for her Relief; but you shall not take, have, or receive, nor permit or suffer any Person to take, have or receive, any Negroes, or other the said East India Commodities, in payment or satisfaction for such Relief; that if any Officer of our Customs, or other Officer employed by you our Governor or Commander in Chief in visiting, searching, or seizing such Ship or Ships, Goods, Merchandize, or Negroes, be corrupt, negligent or remiss in the discharge of his Duty therein, We do hereby require you to suspend him from the execution of his said Office; and that you do by the first Opportunity send an Account of such Officer's Behaviour to Us by one of Our Principal Secretaries of State, that care may be taken, that such Officer be removed from his Employment, and further punished according to his Demerit,—And Our further Will and Pleasure is, that you Our Governor or Commander in Chief, do constantly from time to time, and by the first Opportunity that shall offer, send us by one of Our Principal Secretaries of State, true, full, and exact Accounts of your Proceedings, and of all other Transactions & Occurrences in, or about the Premisses, or any of them.

26. And Whereas, notwithstanding the many good Laws made from time to time, for the preventing of Frauds in the Plantation Trade, it is manifest, that very great Abuses have been and continue still to be practised to the prejudice of the same, which Abuses must needs arise either from the Insolvency of Persons, who are accepted for Security, or from the Remissness or Connivance of such, as have been, or are Governors in the several Plantations, who ought to take care, that those persons, who give Bond, should be duly prosecuted in case of non-performance; You are to take notice, that we take the Good of Our Plantations and the Improvement of the Trade thereof, by a strict and punctual Observance of the several Laws in force concerning the same, to be of so great Importance to the Benefit of this Kingdom, and to the

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Advancing the Duty of Our Customs here, that, if We shall hereafter be informed, that at any time there shall be any failure in the due Observance of those Laws, and of these present Instructions, by any wilful fault or neglect on your part, We shall esteem such Neglect to be a Breach of the aforesaid Law; And it is our fixed and determined Will & Pleasure, that you or the Commander in Chief respectively be for such Offence, not only immediately removed from your Employments, and be liable to the fine of one Thousand Pounds, as likewise suffer such other Fines, Forfeitures, Pains & Penalties, as are inflicted by the several Laws now in force relating thereunto; but shall also receive the most rigorous Marks of Our highest Displeasure, and be prosecuted with the utmost Severity of the Law for your Offence against Us in a Matter of this consequence, that We now so particularly charge you with.

G: R.

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QUEBEC. A List of Ships & Vessels, which have entered inwards in the Port of in the Province of Quebec between the day of and the day of following, being the Quarter ended at with the particular Quantity & Quality of the Loading of each Vessel.

Time of Entry	Ship's Name	Master's Name	Built	Number of			Where & when built	Where & when registered	Owner's Names	General Cargo		From whence	Where & when Bond given	
				Tons	Guns	Men								
										N.B. The particular Quantity & Quality of the Loading must be mentioned under these Colums.-				

In the Register of Prize Ships the Capture & Condemnation must be also specially mentioned, instead of the time & place of Building; List of all Ships trading to, or from the Plantations, or from one Plantation to another, to be prepared Quarterly by the Collector of Customs, and the Naval Officers in the respective Plantations, in order to be transmitted by you to the Lord High Treasurer, or Lords Commissioners of the Treasury for the time being, to the Lords Commissioners for Trade and Plantations, and to the Commissioners of His Majesty's Customs at London by the first Opportunity of Shipping Each Quarter.

18—3—29

QUEBEC. A List of Ships and Vessels, which have cleared outwards at the Port of in the Province of Quebec between the Day of and the day of following, being the Quarter ended at with the particular Quantity & Quality of the Loading of each Vessel.

Time of Clearing	Ship's Name	Master's Name	Built	Number of			When & where built	Where & when registered	Owner's Names	General Cargoe.		Whither bound	Where & when Bond given	
				Tons	Guns	Men								
										N.B.—The particular Quantity & Quality of the Loading must be mentioned under these Columns.				

Endorsed: GUY CARLETON Esq^r Governor of Quebec
Trade Instructions
Dated 3^d Jan^y 1775.

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CSL

C.O. (Quebec 1768-1787 Vol. I.)

[L.S.] George R.

Additional Instructions to Our Trusty & wellbeloved Guy Carleton Esq^{r} Our Captain General & Governor in Chief in & over Our Province of Quebec in America, & of all Our Territories dependent thereupon; Or to the Commander in Chief of Our said Province for the time being. Given at Our Court at S^{t} James's the thirteenth day of March 1775. In the fifteenth year of Our Reign.

Whereas We did by Our general Instructions to you, bearing date at Our Palace of S^{t} James's the day of Declare Our Royal Will & Pleasure that sundry Salaries & Allowances therein mentioned, should be discharged & paid out of any Revenue arising to Us within Our said Province of Quebec, or out of such other Monies as should be granted or appropriated to the Use & Service of Our said Province; the said Salaries & Allowances to commence on, & to be payable from & after the first day of May 1775. It is Our further Will & Pleasure, that over and above the several Salaries and Allowances in the said Instructions mentioned & set down—You do pay, or cause to be paid annually out of the said Revenue or Monies granted or appropriated as aforesaid, unto Our Trusty & welbeloved Edward Bishopp Esq^{r} or to his lawful Attorney, for & during Our Will & Pleasure, the further Sum of One Hundred Eighty two Pounds ten Shill^{s} the said annual Payment or Allowance to commence on the first day of May next ensuing the date hereof.

G: R.

C.O. (Quebec 1768-1787 Vol. I.)

[L.S.] George R

Additional Instructions to Our Trusty & Welbeloved Guy Carleton Esq^{r} Our Captain General and Governor in Chief in and over Our Province of Quebec in America and of all Our Territories, dependant thereupon, or to the Commander in Chief of Our said Province for the time being.—Given at Our Court at S^{t}. James's the fourteenth day of November 1775, In the sixteenth year of Our Reign.—

Whereas We did by Our General Instructions to you bearing date at Our Palace of S^{t} James's, the 3^{d} day of January 1775 Declare Our Royal Will and Pleasure that sundry Salaries and Allowances therein mentioned should be discharged & paid out of any Revenue arising to Us within Our said Province of Quebec, or out of such other Monies as should be granted or appropriated to the Use and Service of Our said Province the said Salaries and Allowances to Commence on and to be payable from and after the first Day of May last; It is Our further Will & pleasure that over and above the several Salaries and Allowances in the said Instructions mentioned and set down, You do pay or cause to be paid annually out of the said Revenue or Monies granted or appropriated as aforesaid unto Our Trusty and Welbeloved John Christopher Roberts Esquire, or to his lawfull Attorney the further Sum of Three hundred and fifty pounds; the said annual payment or Allowance to Commence on the first day of May last.—

G. R.

CARLETON TO GAGE.[1]

(Secret) (Copy) QUEBEC 4th Feby. 1775.

SIR

As this goes by Lt. Cleveland of the 7th, I will venture to be more explicit about what you mention of the Canadians and Indians in your Letter[2] of the 25th Dec^{r}

[1] Canadian Archives, Q 11, p. 290. Gen. Gage had arrived in Boston on May 13th 1774, in the double capacity of Governor of Massachusetts and Commander in Chief of the British forces in North America. Upon him, therefore, rested the duty of carrying out the repressive measures enacted by the Home Government, such as the "Port Act," the "Regulating Act," the "Quartering Act," &c. The troubles which culminated in a rising of the people in Sept. induced Gage to call for more troops. He therefore, as we have seen (p. 410.) not only summoned two regiments from Quebec, but enquired as to Carleton's ability to send him a body of Canadians and Indians to assist in suppressing the colonists.

[2] This letter has not yet been found among the State Papers.

last, than I thought it prudent to do by Post, as one may naturally suppose, those, who seem resolved to force their Country into Rebellion, Jealous of the Correspondence, may intercept our Letters, to make themselves Masters of the Correspondence, and should those Disorders continue, as there is too much Reason to apprehend, I submit it to your Consideration, whether it may not be proper to send me a Cypher, for the greater Security of our Correspondence on Matters of a secret nature.

The Canadians in General have been made very happy by the Act passed in their Favor, all that have spoke, or wrote to me upon the subject, express the most grateful Sense of what has been done for them; I must not however conceal from Your Excellency, that the Gentry, well disposed, and heartily desirous as they are, to serve the Crown, and to serve it with Zeal, when formed into regular Corps, do not relish commanding a bare Militia, they never were used to that Service under the French Government, (and perhaps for good Reasons) besides the sudden Dismission of the Canadian Regiment raised in 1764, without Gratuity or Recompence to Officers, who engaged in our Service almost immediately after the Cession of the Country, or taking any Notice of them since, tho' they all expected half pay, is still uppermost in their Thoughts, and not likely to encourage their engaging a second Time in the same Way; As to the Habitans or Peasantry, ever since the Civil Authority has been introduced into the Province, the Government of it has hung so loose, and retained so little Power, they have in a Manner emancipated themselves, and it will require Time, and discreet Management likewise, to recall them to their ancient Habits of Obedience and Discipline; considering all the new Ideas they have been acquiring for these ten years past, can it be thought they will be pleased at being suddenly, and without Preparation embodied into a Militia, and marched from their Families, Lands, and Habitations to remote Provinces, and all the Horrors of War, which they have already experienced; It would give an appearance of Truth to the Language of our Sons of Sedition, at this very Moment busily employed instilling into their Minds, that the Act was passed meerly to serve the present Purposes of Government, and in the full Intention of ruling over them with all the Despotism of their ancient Masters.—

It may be further observed, that the Act is no more than the Foundation of future Establishments; that the new Commissions and Instructions, expected out, are not yet arrived, and that the Dissolution of the present Constitution, if it deserves the Name, and Establishment of the new one, are still at some Distance; at that Period, upon the first of May,[1] every Civil Regulation, at present existing, is annihilated, and the whole to be cast into a new Form, a Work that must necessarily be attended with some Difficulty, and will require Time, Consideration, and great Prudence, for which it is not in our Power to prepare, untill the final Determination of the Ministry upon all these Matters is known; had the present Settlement taken Place, when first recommended, it would not have roused the Jealousy of the other Colonies, and had the appearance of more disinterested Favor to the Canadians; many Advantages might have resulted therefrom at this Juncture, which must now be deferred to a more distant occasion—

Since it could not be done before, this would prove a fair opportunity for raising a Battalion or two of Canadians; such a measure might be of singular Use, in finding Employment for, and consequently firmly attaching, the Gentry, to our Interests, in restoring them to a significance, they have nearly lost, and through their Means obtaining a further Influence upon the Lower Class of People, a material Service to the State, besides that of effectually securing many Nations of Savages—

As to the Indians, Government having thought it expedient to let Matters go in that channel, I have ever considered the late Sir W^m^ Johnson,[2] to whom, I suppose,

[1] The Quebec Act did not come into force until May 1st, 1775.

[2] Sir Wm. Johnson, having early settled on the Mohawk river above Albany, and having acquired, through trade and the French wars, an unusual influence over the Iroquois Indians, had been appointed Superintendant of Indian Affairs for the Northern Division. He died on July 11th, 1774. Col. Guy Johnson, his nephew and son-in-law, who had also served in the war for the conquest of Canada, had been appointed Sir Wm. Johnson's deputy in 1762 and named as his successor. On Sir William's death he continued for a time as Indian Agent; but his conduct of the office was not very satisfactory and later he was superseded by his cousin Sir John Johnson, son of Sir William. In 1775 the position of Superintendant of Indian Affairs was conferred upon Major John Campbell.

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Colonel Guy Johnson succeeds, as having their Political Concerns under his immediate Direction, with which I never interfered further, than their Commercial Interests, or the private Property, they possess in the Country, required, and upon this Principle Major Campbell's Commission was granted; however, if I am not greatly deceived in my Intelligence, not only the Domicilie's of the Province, but all the neighbouring Indians are very much at your Disposal, whenever you are pleased to call upon them, and what you recommend shall be complied with—

Left to my own Speculations in this retired Corner, without Intelligence of what passes in Europe till very long after the Event, and from a knowledge of the present Continental Transactions only, I entertain no Doubt, our Army is by this Time augmenting, and that as soon as the Navigation opens, some Troops from Britain will be sent up this River, and in my Opinion, it should not be an inconsiderable Force; if we are to have a French War, this Corps will become indispensably necessary here, if not, it might effectually second your Intentions, prevent much Effusion of Blood and Treasure, and procure the speedy Decision of a Contest, rendered more dangerous by every Moment's Delay; the Strong easily find Friends, and no Doubt they might readily procure a Multitude of excellent Guides, who would lead the Way on any Service you should think right to direct——&ca

(Signed)

GUY CARLETON

(a true Copy)

H. T. CRAMAHÉ

His Excy General Gage

Endorsed:—Copy of a Letter from Genl. Carleton to Genl. Gage, dated Quebec 4th Febry 1775.

In Lieut. Governor Cramahé's Letter of the 9th Novr

DARTMOUTH TO CARLETON.[1]

WHITEHALL 7th June 1775.

Governor Carleton

Sir,

I have recd your Dispatch of the 13th of March,[2] No 9, and have laid it before the King.

The Enemies of the Constitution appear to be unwearied in their Endeavors to convey every Misrepresentation that may have the Effect to weaken the Hands of Govt, and to encourage Faction & Discontent. It is hoped, however, that the Firmness of the present Parliament, in Support of the Measures which the last Parliament thought fit to adopt for America in general, and for regulating the Government of Quebec in particular, will have the Effect to quiet the apprehensions, and remove the Prejudices which ill designing Men have so artfully endeavoured to create.

The Attempt made to raise new Difficulties to Govt on the ground of the Petitions from the old Subjects in Quebec, was supported by the whole Strength of Opposition:[3]—how little Impression it made within Doors, will best appear from the great Majority in both Houses against the Proposition that was moved upon those Petitions; and I have the Satisfaction to assure you, that it met with no greater Encouragement without Doors, and that, to all appearance, the People of England, in general, concur in the Measures which have been adopted for America.

[1] Canadian Archives, Q 11, p. 145.

[2] In this Carleton referred to the continued agitation of the British element against the change in the system of government introduced by the Quebec Act; he referred also to the circulation of a printed translation of the letter addressed to the Canadians by the Continental Congress at Philadelphia; Minutes of the Council were likewise enclosed. See Q 11, p. 129.

[3] Referring to the motion made in Parliament during the session of 1775 for the repeal of the Quebec Act.

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I have also the Satisfaction to acquaint you, that an Account published here of a Skirmish between the King's Troops and the Provincials, in the Neighbourhood of Boston, of which, however we have received no Intelligence from General Gage, has had no other Effect than to increase that just Indignation, which every Friend to Government feels, for the Insult offered to the Constitution, in the rebellious Resistance to the Authority of Parliament, by the People in North America.

I am &c^a

DARTMOUTH.

CARLETON TO DARTMOUTH.[1]

MONTREAL 7^th June 1775.

MY LORD! The 19^th of last Month in the Evening, I received Intelligence from General Gage by Sea of the Rebels having commenced Hostilities in the Province of the Massachusets, and Requesting I would send the 7^th Regiment with some Companies of Canadians and Indians to Crown Point, in order to make a Diversion, and favour his Operations.

The next morning, Captain Hazen arrived Express at Quebec, and brought me an Account, that one Benedict Arnold said to be a native of Connecticut, and a Horse Jockey, landed a considerable Number of armed men at St. John's, distant from this Town eight Leagues, about eight in the Morning of the 18^th, surprised the Detatchment of the 26^th doing Duty there, consisting of a Serjeant and ten Men, and made them Prisoners, seized upon The King's Sloop, Batteaus, and every other Military Store, and a few Hours after departed, carrying off the Craft, Prisoners, and Stores they had seized.

From this Party We had the first Information of the Rebels being in Arms upon the Lakes, and of their having, under the Command of said Arnold, surprised Ticonderoga, Crown Point, the Detatchment of the 26^th doing Duty at these two Places, and all the Craft employed upon those Lakes; Arnold told Captain Hazen, He had for that Purpose received a Commission of Colonel from the Congress of the Massachusets, with the Command of five hundred Men, that Volunteers to the Amount of fifteen hundred followed him, but he did not wait for them all.

The same Evening another Express brought an Account of the Rebels having landed at St. John's a second Time, in the Night between the 18^th and 19^th, this Party was said to be three hundred strong, and that nine hundred more were at the Isle aux Noix; this second Party however was not near so numerous as at first reported, and most probably would have been cut off by a Detatchment of one hundred Men from the 26^th Regiment, under the Command of Major Preston, had they not been advised of the March of the Troops by one Bindon a Merchant of this Town, upon which they crossed the Sorel, and were fired at by the Troops, as they went down the River.

While this Party, Commanded by one Ethan Allen, said to be outlawed in the Province of New York, remained at St. John's, He sent a Letter by this same Bindon, addressed to one Morrison and the British Merchants of Montreal Lovers of Liberty, demanding a Supply of Provisions, Ammunition, and spirituous Liquors, which some of them were inclined enough to furnish, had they not been prevented.

The little Force we have in the Province was immediately set in Motion, and ordered to assemble at or near St. John's; The Noblesse of this Neighbourhood were called upon to collect their Inhabitants, in order to defend themselves, the Savages of those Parts likewise had the same orders; but tho' the Gentlemen testified great Zeal, neither their Entreaties or their Example could prevail upon the People; a few of the

[1] Canadian Archives, Q 11, p. 184. This despatch gives Carleton's account of the attack on Canada as the sequel to Gage's operations at Boston. It reveals also the surprising extent to which the general body of the French Canadians had adopted British ideas of personal liberty during ten years of British law and administration, as shown in their refusal to submit once more to the feudal authority of the noblesse under the restoration of the French system by the Quebec Act. Many documents of the period, in addition to the few samples given, deal with this important crisis in Canadian government.

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Gentry, consisting principally of the Youth, residing in this Place, and it's Neighbourhood, formed a small Corps of Volunteers under the Command of Mr. Samuel Mackay, and took Post at St. John's; the Indians shewed as much Backwardness as the Canadian Peasantry.

The Consternation in the Towns and Country was great and universal, every Individual seemed to feel our present impotent Situation, for tho' in no Danger of internal Commotions, we are equally unprepared for Attack or Defence; Not six hundred Rank & File fit for Duty upon the whole Extent of this great River, not an armed Vessel, no Place of Strength; the ancient Provincial Force enervated and broke to Pieces; all Subordination overset, and the Minds of the People poisoned by the same Hypocrisy and Lies practised with so much Success in the other Provinces, and which their Emissaries and Friends here have spread abroad with great Art and Diligence; had it not been for those few Troops, three hundred Rebels might have procured all the Arms, Ammunition, and Provisions, this Province can afford, and have kept Post at St. John's with great Security.

We are at present fortifying a Post there and at Oswegatchie, tho' there are other Avenues into the Province, I hope the above may be made sufficiently strong to resist any sudden Attack of this Sort; a considerable Force here might not only secure ourselves, but assist General Gage in extinguishing the Flames of Rebellion in the other Provinces more speedily, I fear he has none to spare, and it may be too late in the year to have them from Europe, however I shall see what in our present Situation is further practicable for The King's Service.

Within these few Days the Canadians and Indians seem to return a little to their Senses, the Gentry and Clergy have been very useful upon this Occasion, and shewen great Fidelity and Warmth for His Majesty's Service, but both have lost much of their Influence over the People; I propose trying to form a Militia, and if their Minds are favourably disposed, will raise a Battalion, upon the same Plan as the other Corps in America, as to Numbers and Expence, and were it established, I think, it might turn out of great public Utility; but I have many Doubts whether I shall be able to succeed.

These Measures, that formerly would have been extremely popular, require at present a great Degree of Caution and Circumspection; so much have the Minds of the People been tainted by the Cabals and Intrigues, I have from time to time given Your Lordship some Information of, I am as yet uncertain whether I shall find it advisable to proceed in the aforementioned Undertaking; to defame their King and treat him with Insolence and Disrespect, upon all Occasions to speak with the utmost Contempt of His Government, to forward Sedition and applaud Rebellion seem to be what too many of His British American Subjects in those Parts think their undoubted Right.

For my Part since my Return to this Province, I have seen good Cause to repent my having ever recommended the Habeas Corpus Act and English criminal Laws; these Laws, now used as Arms against the State, require more public Virtue, and greater Fidelity to their Prince, than is generally to be met with amongst the set of People here, that take the Lead upon all Occasions; To render the Colony of that Advantage to Great Britain, it certainly is capable of, would require the reintroducing the French Criminal Law, and all the Powers of it's Government.

Our Communication with the other Provinces being entirely stopped, we run a Risk of being at a great Loss for Money, to defray the ordinary and extraordinary Expences, the Service here must be attended with, The Money Contractors, as well as Trade, as this Time of the Year, being used to procure large Supplies of Cash from New York and Philadelphia, with which Places We have at present no Intercourse; if fifteen or twenty thousand Pounds were sent here as soon as possible, it would be of great Use to Government, which must lose considerably by the present low course of Exchange, likely to fall every Day; could it be procured in Dollars, and some Part in small silver,

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the same would prove highly beneficial to this Country, where that species is become extremely scarce.

I am with much Respect and Esteem
Your Lordship's
Most Obedient and
Most Humble Servant
GUY CARLETON

Earl of Dartmouth
One of His Majesty's
Principal Secretaries
of State.

8th June

P. S. Since I wrote the above, I find the Rebels are returned, and have taken Post near to St. John's, and there have The King's Sloop and Major Skene's Schooner well armed, with several Bateaus; tho' I have not as yet been able to procure exact Accounts of their Numbers or Intentions, I have Reason to believe from the imperfect Information already received, they are more in Number than upon their former Incursions.

G. C.

CRAMAHÉ TO DARTMOUTH.[1]

QUEBEC 21st Sepr 1775.

My Lord!

I am sorry to transmit to Your Lordship the disagreable account of a disagreable Business, some time in the Beginning of this Month, upon News of the Rebel Army approaching, General Carleton set out for Montreal in great Haste; the 7th instant the Rebels landed in the Woods near St. John's, and were beat back to their Boats by a Party of Savages incamped at that Place; in this Action the Savages behaved with great Spirit and Resolution, and had they remained firm to our Interests, probably the Province would have been saved for this Year, but finding the Canadians in General averse to the taking up Arms for the Defence of their Country, they withdrew, and made their Peace.

After their Defeat the Rebels retired to the Isle aux Noix, where they continued till lately, sending out some Parties, and many Emissaries, to debauch the Minds of the Canadians and Indians, in which they have proved too successfull, and for which they were too well prepared by the Cabals and Intrigues of these two last years; We knew of their being reinforced, and very considerably, I suppose, as they appeared in Numbers near St. John's last Sunday Evening; where or when they landed, or the Particulars since, we have but very imperfect Accounts of, all Communication with the Forts of St. John's and Chambli, being, as far as I can find, entirely cut off.

No Means have been left untried to bring the Canadian Peasantry to a Sense of their Duty, and engage them to take up arms in Defence of the Province, but all to no Purpose; The Justice must be done to the Gentry, Clergy, and most of the Bourgeoisie, that they have shewen the greatest Zeal and Fidelity to the King's Service, and exerted

[1] Canadian Archives, Q 11, p. 249. This and the succeeding letter from Chief Justice Hey give two other versions of the quite unexpected sequel to the Quebec Act. In the meantime Lord Dartmouth was fully relying upon Carleton's previous assurances of what could be expected from Quebec in support of the British interests on the continent, if only the French laws and system of government were re-established and the noblesse and clergy restored to their former ascendancy. Hence, when the crisis was precipitated at Boston, he wrote to Carleton, July 1st, 1775, saying that "the King relies upon the Loyalty & Fidelity of His Canadian Subjects for their Assistance to suppress Rebellion, and it is His Majesty's pleasure that you do, if you see no objection, immediately upon the Receipt of this Letter take the proper Steps for raising a Body of 3,000 Canadians in such form & manner as you shall judge most proper, to act as Light Infantry, either in a separate Corps, or in conjunction with His Majesty's other Troops, as shall, upon consulting Genl Gage, be thought most expedient." Q 11, p. 152. On receiving still worse news from Gage, Dartmouth writes again to Carleton, on the 24th of July, "and it having been judged proper, upon a consideration of these Despatches that the number of Men to be raised in Canada, should be double what was first proposed, It is His Majesty's Pleasure that instead of 3,000 men which you were authorized to raise by my Letter of the 1st of July, the number to be raised be 6,000, and I have accordingly given directions for an additional supply of Arms, Clothing, & Accoutrements in proportion." Q 11, p. 182.

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their best Endeavours to reclaim their infatuated Countrymen; some Troops, and a Ship of War or two, would in all likelihood have prevented this general Defection.

Some of the King's old Subjects have joined the Rebels, and it were to be wished all of them, inclined to that Cause, had done the same, we should be the safer for it, the Copy of an intercepted Letter from one of them is herewith inclosed;[1] some Canadians, I understand, are with the Bostonians upon every Road.

As the ship this goes by sails to morrow very early, I have not time to enter into particulars, Lt. Col. Maclean with about eighty of his new raised Corps, and twenty of the Fusileers, besides a Militia composed of the Inhabitants of the Town, is all that we have to repair it's Breaches, and defend it; General Carleton, who is still at Montreal, has not received a Line from Your Lordship since the 15th of April, or from General Gage since the 3rd of July last.

I have the Honor to be with great Respect,

My Lord!

Your Lordship's
Most Obedient and
Most Humble Servant
H. T. CRAMAHÉ.

Earl of Dartmouth
One of His Majesty's
Principal Secretaries
of State.

CHIEF JUSTICE HEY TO THE LORD CHANCELLOR.[2]

QUEBEC Aug. ye 28th 1775.

My Lord

Since I had the honour of writing to your Lordship soon after my arrival here, by Captn. Brash, The affairs of this Province are so far in a better train as the apprehensions of any decisive invasion from the Garrisons of Crown Point and Ticonderoga seem to be removed by the lateness of the season, and an appearance of less alacrity on their Part for a business of that sort than they shewed a month ago, or when I dispatched my other Letter to your Lordship. Whether this arises from the fears which the Congress may have entertained of opening the wound they have given the Mother Country too wide to admit of being closed by treaty, or from those of Individuals in the danger of the attempt, I am at a loss to determine, & can only say, that, from some cause or other, the Expedition appears to be suspended, if not wholly abandoned, & unless they mean to take advantage of the winter when they may pass the Lake upon snow shoes, I should think the latter the most probable.

I could hardly expect to find credit with your Lordship for what I asserted of the backwardness of the Canadians when the situation of things here, made it necessary for Gen Carleton to declare Martial Law,[3] and call upon the Militia to turn out in defence of the Province; unhappily! every day furnishes too many instances of it, and gives me an Idea of the real character of the Canadians very different from what I used to entertain, and constantly represented to your Lordship whenever I had occasion to speak of them. Your Lordship will remember how much has been said by us all of their Loyalty, obedience & Gratitude, of their habitual submission to Government, & their decent civil & respecfull demeanour to those who had the conduct of it, but time and accident have evinced that they were obedient only because they were afraid to be otherwise & with that fear lost (by withdrawing the troops) is gone all the good disposition

[1] This letter, which was in French, was signed by Jas. Livingston, who had come originally from New York State and who was a grain merchant living on the Sorel. See Q 11, p. 252.

[2] Canadian Archives, Q 12, p. 203.

[3] This Proclamation was issued on June 9th, two days after his despatch to Dartmouth given above. The Proclamation is given in Maseres' "Additional Papers concerning the Province of Quebeck," p. 170. It authorized the raising of the whole militia of the Province.

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that we have so often and steadily avowed in their names & promised for them in ages to come. Yet I am sometimes willing to think that fear, joined with extreme ignorance and a credulity hardly to be supposed of a People, have been overmatched by the subtilty & assiduity of some Colony agents who were very busy here last winter, & that they are not at bottom an ungenerous or disobedient People. That temperate management and gentle methods of persuasion and instruction may yet bring them to a sense of their duty & indeed their interest, & when they are made to understand that the true point of fear should be that of sitting still & not putting themselves into a state of defence, they will take arms not only for their present defence, but when supported by a body of the Kings troops be ready for any offensive service that the times may demand; which in my poor opinion who pretend to nothing less than military knowledge, would strike more terrour into the Colonies than Gen Gage's army doubled or trebled at Boston, where from the nature of the Ground & a thousand other circumstances there can be little hopes of making any decisive impression. But be that as it may, your Lordship who has indulged me in a freedom of expressing my thoughts with respect to this country upon points of less importance will forgive me upon one which appears to me so essential, tho it should happen to be a little out of my Line & fall more immediately within that of another to whose circumspection however & Judgement I pay the utmost deference, I mean the Governour's.

It appears to me that while England has a firm hold of this Country, which a good Body of troops & nothing else will give her, her cause with the Colonies can never be desperate 'tho' she should not have an inch of ground in her possession in any one of them, from this country they are more accessible, I mean the N. England People, (Paradoxical as it may seem) than even from Boston itself, & I believe it to be as true as any thing can be that has not been reduced to absolute proof that the Colonies without the assistance of England, would have been reduced from North to south by this Province in the last war. They thought so themselves, & the Pains they have taken to keep the Canadians quiet which a good appearance of troops from England would soon remove, convince me that they are in dread of it at this hour, and I do most firmly believe that if the army at Boston was removed here ready to begin its operations from hence in the spring & the fleet continued (if that could be done) to block up their ports & prevent their trade, it would have a better effect & produce terms of accomodation more likely to be received than any other method that could be adopted, except that of pouring in the whole strength of G. Britain by sea & land & carrying destruction & Ruin thro' every accessible part of the Provinces. If this be so & there is any thing like truth in this observation what a melancholy thing it is to reflect in what a precarious situation this province stands by being deprived of the few Regiments we had here before these troubles broke out, so much so that the very preservation of it in the interest of the Crown depends more upon our Enemies than ourselves. we have hardly 500 men at St. Johns the most obvious pass to defend & are obliged to leave many others intirely neglected, & from what we have had occasion to see of the Canadians very little dependance is to be had upon them. They are terrified or corrupted to a degree that your Lordship can have no Idea of, & are impressed with the strangest ideas that ever entered into the minds of men. Sometimes they believe they are to be sent to Boston and nothing can persuade them that a few transports which are waiting for Provisions, are not lying in wait to recieve them, at other times they are told that the People of Boston are fighting merely to prevent the return of the stamps, which they seem to think a matter of great Politeness & do not wish to see them disturbed in so good a work. Some amongst them believe they are sold to the Spaniards (whom they abominate) & that Gen. Carleton has got the money in his Pocket, in short such a mixture of ignorance fear credulity perverseness & Prejudice never yet I believe took possession of the human mind or made it more difficult to know what to do with them. in this situation it will readily occur to your Lordship that our only object at present is to keep these Ruffians from invading us in the course of the winter, & wait 'till better & more sober times for the Establishment of the Country under the new Act of Parliament. And yet something of that sort at least in a temporary way must be done and is indeed in agitation at present, in the course of which

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as far as it has gone it is wonderfull to observe as great an instance of folly & strange infatuation amongst the Canadians as in the article of the Militia. what will be your Lordships astonishment when I tell you that an act passed for the express purpose of gratifying the Canadians & which was supposed to comprehend all that they either wished or wanted is become the first object of their discontent & dislike. English officers to command them in time of war, & English Laws to govern them in time of Peace, is the general wish. the former they know to be impossible (at least at present) & by the latter if I understand them right, they mean no Laws & no Government whatsoever—in the mean time it may be truly said that Gen. Carleton has taken an ill measure of the influence of the seigneurs & Clergy over the lower order of people whose Principle of conduct founded in fear & the sharpness of authority over them now no longer exercised, is unrestrained, & breaks out in every shape of contempt or detestation of those whom they used to behold with terrour & who gave them I believe too many occasions to express it. And they on their parts have been and are too much elated with the advantages they supposed they should derive from the restoration of their old Priviledges & customs, & indulged themselves in a way of thinking & talking that gave very just offence, as well to their own People as to the English merchants. The little I have seen of them in Council gives me no Idea of their Abilities or moderation inflexible to any arguments either of expediency or Justice they will admit no alteration in their antient Laws particularly in the article of commerce which I insist upon, & believe shall carry in favour of the English merchants, with whom almost the whole trade of the country lyes, & which without them was & without them will continue except in a very few articles & those to no extent, a country of no trade at all in short & to relieve your Lordship from this unpleasant prospect of things in detail, Let me say in general that this country affords as gloomy an one in point of security & in the ill humours & evil dispositions of its inhabitants, to one as anxious as I hope I am for the prosperity of my own deeply interested in this, as can be imagined. For the share I have been made to take in it, tho' the most distant from my wishes I repent not but on the contrary will much rejoyce if I shall be found to have been an instrument in preventing a still more ruinous state of things, or may be made the means of restoring them to a better. That is at present all my consolation in an office to which I find myself as little equal as I am inclined, & from which I will expect of your Lordships bounty (I had all most said Justice considering the great weight your Lordships recommendation had in sending me a second time hither) an honourable & decent retreat. in your Lordships own department I neither expect nor desire it, such of the Employments in your Lordships disposal as require legal ability to fill them I am unequal to in every light, & to those that do not, there must be so many that have better Pretensions to your Lordships favour, indeed there can be none that have less, I do not presume to request. I will hope however for your Lordships general Protection & Countenance & will trust that you will concurr with the rest of his Majestys Ministers in thinking that ten years honest, however imperfect, Endeavours to serve the Crown in an unpleasant & something critical situation deserve to be compensated with moderate & reasonable means of Retirement which I should prefer to the first office of distinction or Profit that the Crown has to bestow.

In this hope I take my Leave of your Lordship desiring your Lordship will be so good as present my best respects to Lady Apsley & Miss Bathurst, & believe me with most perfect Esteem & Gratitude

My Lord
Y^r Lordships most obliged & most
Obed. Hble Sert.

W. HEY.

P. S. It is I hope unnecessary for me to say that I would have executed your Lordships commission with respect to the Nut trees if I could have found an opportunity, but they are not the growth of this Province & your Lordship knows we have no communication with any other. I am told Lord Gage has trees of them of all sorts sent many years ago by his Brother the General from New York.

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Sept^{r} 11th

I am sorry to be obliged to inform your Lordship that matters are much worse since I began this letter which I have not yet found an opportunity of sending No ship having sailed from hence to England during the Interval.

The Rebels are returned into this Province in great Numbers well provided with every thing & seemingly resolved to make themselves masters of this Province. Hardly a Canadian will take arms to oppose them & I doubt all we have to trust to is about 500 men & 2 small forts at St. Johns. Every thing seems to be desperate & I cannot but fear that before this reaches your Lordship Canada will be as fully in the Possession of the Rebels as any other Province upon the Continent, I shall stay 'till every hope is gone which will I fear be but a short time.

Sep^{r} 17th. The Rebels have succeeded in making Peace with the Savages who have all left the Camp at St. John's many of the Canadians in that Neighourhood are in arms against the King's Troops & not one hundred except in the Towns of Montreal & Quebec are with us. St. John's & Montreal must soon fall into their hands—& I doubt Quebec will follow too soon. in this situation I hold myself in readiness to embark for England where I possibly may be of some use your Lordship will I hope agree with me that I can be of none here.

Endorsed :—Original Letter from Mr. Hay chief Justice of Quebec to the Lord Chancellor dated Augt. 20th Sep^{r} 11 & 17th communicated by his Lordship 12th Novemb^{r} 1775.

CARLETON TO GERMAIN.[1]

CHAMBLI 28th Sept^{r} 1776.

My Lord

I have received Your Lordships letter of the 21st of June[2] and cannot but think myself highly honoured by the notice His Majesty is pleased to take of my Services, for which I shall allways remain very thankfull.

Your Lordship having expressed a "regret that I neither specified the actual force "of the Rebels, nor communicated the Intelligence I received ; nor the conjectures I "formed relative to their intentions." Also that my "Silence as to my own intended "operations, and the present disposition of the Canadians was much to be lamented "because the ignorance in which I left you concerning these matters renderd it "impossible for you to convey to me, for the present any further Instructions."[3]

* * * * * *

As to my opinion of the Canadians, I think there is nothing to fear from them, while we are in a state of prosperity, and nothing to hope for when in distress ; I speak of the People at large ; there are among them who are guided by Sentiments of honour, but the multitude is influenced only by hopes of gain, or fear of punishment.

I have given my opinion so amply on the affairs of Canada, how much the Canadians may be depended upon, and under what circumstances they may be usefull, in former letters which lie in your Lordships office, that I must beg leave to refer you to them ; particularly to one marked *secret*, I think it was wrote in 1769, to the Earl of Hillsborough ;[4] also to copies of my Letters to General Gage in February 1775[5]—and

[1] Canadian Archives, Q 12, p. 188. On Jan. 25th, 1776, Lord Geo. Sackville Germain succeeded Lord Dartmouth as Colonial Secretary, or Secretary of the American Department, as it was frequently named at that period.

[2] Conveying the King's approval of his conduct and that of his officers and of the garrison, merchants and others in defending the town of Quebec against the attacks of the invading forces under Montgomery and Arnold. See Q 12, p. 44.

[3] Here follow details of military plans and operations for maintaining the command of Lake Champlain.

[4] This is evidently the letter of Nov. 20th 1768 marked "Secret Correspondence," in which he points out the important position which Canada might occupy in maintaining British interests on the Continent if the Canadian noblesse, through whom the peasantry and the Indians can be secured, were restored to the influence and power which they held under the French system. See p. 227.

[5] His recent letter of 4th Feb. 1775. See p. 450.

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early in 1767,[1] in which, and indeed in all my political letters, I had a war of this sort constantly in view, as your Lordship may perceive upon perusal, and have not now the least reason to change my opinion of these matters.

The second division of the Brunswick Troops[2] is arrived, except about half the Regiment of Speckt, in the Vriesland Transport. They are on their march, and I expect their last Division will arrive at St. Johns about the middle of October.

I am my Lord
with all due respect
Your Lordships
most obedient
and most
humble servant

GUY CARLETON.

Lord George Germain

CARLETON TO GERMAIN.[3]

Quebec 9th May 1777

My Lord!

I received by Captain Le Maistre, who arrived here with General Burgoyne in the Apollo the 6th instant, your Lordship's several Dispatches from N°. 3. to No. 7. inclusive, Your seperate Letter of 26th March last, and the others from N° 9 to No. 16 inclusive, with the annexed Papers.[4]

Inclosed herewith, I now transmit to Your Lordship the Ordinances, that have passed in the Session of His Majesty's Council, held here this last Winter;[5] these Ordinances have been framed upon the Principle of securing the Dependence of this Province upon Great Britain, of suppressing that Spirit of Licentiousness and Independence, that has pervaded all the British Colonies upon this Continent, and was making, through the Endeavours of a turbulent Faction here, a most amazing Progress in this Country; and in the Hopes of rendering Canada of Use to Great Britain by it's Military Strength, as well as by it's Commerce.

There is no Doubt, but the Canadians may again be reduced to that state of Deference and Obedience, which they formerly paid their ancient Government, tho' it must necessarily be the work of some time; untill it is firmly accomplished, it will require a Military Force to support the Civil Authority; the Noblesse, Clergy, and greater Part of the Bourgeoisie, in the Course of the present Troubles, have given Government every Assistance in their Power, and will greatly help in restoring a proper

1 Referring to his letter of 15th Feb., 1767. See p. 195. This is to much the same purpose as that to Hillsborough in Nov. 1768.

2 In a note from George III. to Lord North, 12th Nov., 1775, referring to the distribution of the German mercenaries to be employed in the colonies, the King says, "The Troops of the Duke of Bruns wick shewed so much want of courage last war, that Carleton, who can have but a small number of British Troops, ought to have the Hessians." Letters of George III. to Lord North, in Lord Brougham's "Statesmen of the Time of George III." Vol. 1,p.93.

3 Canadian Archives, Q 13,p.96.

4 These despatches refer almost entirely to military matters. They will be found as follows: Nos. 3 to 7 in Q 12 pp.84, 86, 88, 90, 92; Nos. 9 to 16 in Q 13,pp.80, 81, 82, 83, 85, 87, 90 & 93. The separate letter of 26th March gives instructions as to the disposal of the troops sent to Quebec. Three thousand were to be retained in the Province and the remainder sent on two expeditions, one under Burgoyne and the other under St. Leger. That under Burgoyne was the famous expedition which met with disaster at Saratoga.

5 See list of Ordinances given below, p. 463.

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subordination,[1] without which all Regulations are vain; but this depends still more on Your Lordship's Office, and the King's confidential Servants at Home, without whose steady concurrence, all the Efforts of a Provincial Administration, for many years, must come to nothing.

Some of the British Traders here having taken up the Idea of a Chamber of Commerce, in place of Juries, a Plan was accordingly drawn up, which is herewith inclosed; the Militia Ordinance is to continue only for two Years by Way of Trial, and as an Essay towards training the Canadians to Obedience by Degrees, untill we have time to perfect a more solid and permanent system, if our present Tranquility continues uninterrupted, we shall be able next Session, I hope, to make a further Progress in the settlement of this extensive Province.[2]

With these Ordinances your Lordship will receive a Proclamation, prohibiting the Exportation of Cattle and live Stock for this Year, and of Corn, Flour, and Biscuit, untill our Victuallers arrive, and we can hear how His Majesty's Forces to the Southward, under the Command of Sir William Howe, are supplied.

We have no Parchment in the Province, or the Ordinances should have been transcribed thereon.

I am with all due Respect
My Lord!
Your Lordship's
Most Obedient And
Most Humble Servant

GUY CARLETON

* * * * * *

Lord George Germain
One of His Majesty's Principal
Secretaries of State.

[1] There are numerous references in the documents of the period, to the strong objections which the general body of the French Canadians manifested at being subjected once more to the feudal control of the noblesse. Gen. Burgoyne, in a letter to Lord Germain, May 14th, 1777, says he finds it impossible to obtain much assistance from the Canadians, and this he attributes to two causes; "I believe particularly to the unpopularity of their Seigneurs, & to the poison which the Emissaries of the rebels have thrown into their minds." Q 13, p. 108. Having made further complaints on the same score to Carleton and Germain, Carleton answers him, on the 29th May, in the following manner:—"The Desertion you give me Notice of in your Letter of 26th instant does not surprise me, it has been the same here, and was no more than what I expected; if Government laid any great Stress upon Assistance from the Canadians, for carrying on the present war, it surely was not upon Information proceeding from me, Experience might have taught them, and it did not require that to convince me, these People had been governed with too loose a Rein for many years, and had imbibed too much of the American Spirit of Licentiousness and Independence administered by a numerous and turbulent Faction here, to be suddenly restored to a proper and desirable Subordination." Q 13, p. 222.

[2] In another letter, of July 10th, 1777, to Germain, Carleton throws further light on this subject:—"That in the Beginning, I might not have the Disobedience of great Numbers to contend with, under many Disadvantages, a small Force in Arms was demanded of the Province for this Season, and agreable to their former Plan of Service; in Order to reconcile them by Degrees, to what under the French Government was deemed an indispensable Duty." He then refers to the more successful effort to raise an additional force by the volunteer system, and, in response to Burgoyne's request and Germain's expectation, he had ordered a Corvée of 500 men to follow the army. "Nevertheless Your Lordship will be pleased to observe, that these services are a considerable Burthen upon the People, and that after the Disuse of them for many years, it is not surprising, they should forget the Duty, to which they were bound by the Tenure of their Lands, and their original Government, Nor is it a Matter of Wonder, that after so many concurring Circumstances to destroy that Obedience, for which they formerly were remarkable, and to encourage all Kind of Disrespect to the King's Authority in this Province, that I should meet with Difficulties in restoring these ancient Usages, without either Laws, Strength in Government, or even Your Lordship's Countenance as Minister, to assist me;" Q 13, p. 333.

PLAN FOR THE ESTABLISHMENT OF A CHAMBER OF COMMERCE FOR THE CITY & DISTRICT OF QUEBEC.[1]

Art. 1st.

The chamber of commerce to be composed of all the merchants and traders in this city & district, willing to become members thereof, french & english without distinction.

Art. 2nd.

Every member of the chamber of commerce shall pay on his admission the sum of eight spanish dollars towards the support thereof, and continue to pay yearly, so long as he may chuse to remain a member, his proportion of what may be thought sufficient, by a majority of the subscribers, to defray the annual expences of the chamber.

Art. 3rd

Twenty five directors, including a president, vice-president, treasurer, and clerk, shall be elected, without delay, by a majority of the subscribers; and they shall be deemed a full board for the space of one year, and any five or more of the directors, but not less, shall have power to sit and do business.

Art. 4th

At the expiration of every year, the same number of directors shall be chosen, in the same manner, from the list of subscribers, for an equal space of time, so that all the members may serve in their turn, if elected by the majority.

Art. 5th

The directors of the chamber of commerce, so established, to be a board of arbitrators, authorised to decide, to the best of their knowledge and judgment, all commercial matters, in controversy, that may be brought before them, by mutual consent of parties; the award of a majority of five or more sitting directors, on any point in dispute, when made in writing, within a limited time, to be final in all matters not exceeding £50. hfx currency; but when the same shall exceed that sum, either of the contending parties shall have liberty to appeal to a full board, every member whereof shall be summoned for that purpose; and the said full board shall not consist of less than a majority of the whole twenty five directors, and the decision of the said full board, or the major part thereof, shall be final, without appeal.

Art. 6th

The directors of the chamber of commerce for the time being, may frame, to the best of their judgments, rules and regulations for the general benefit of trade; subject nevertheless to the concurrence, or disapprobation of the whole body of members, at meetings to be held every three months, or oftener if necessary, and such rules and regulations, when approved of by a majority of subscribers, and requiring the sanction of law, shall be laid before the legislature of the province for the time being, for their consideration, and, if by them also approved of, prayed for, in order to be past into a law.

[1] Enclosed in the foregoing despatch of May 9th. Canadian Archives, Q 13,p.99. The object of this plan was to avoid bringing commercial matters into the regular courts where, under the Quebec Act, the French and not the English civil law was made the basis of decision. The virtual effect of the plan, had it been authorized, would have been to set up a legislative, executive, and judicial system within the Province to govern the trade relations of the members of the Chamber; and this in time must have involved the trade of others dealing with them. Another method however was sought to partially effect the same object, as subsequent documents will show.

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Art. 7th

The chamber of commerce to be made a body corporate, capable of suing and of being sued in any court of record in this province, to hold funds, to receive donations and endowments, and to give premiums for the encouragement of trade and agriculture.

Art. 8th

The majority of the subscribers to the chamber, to have power to form rules and bye-laws for the better government, and good order of the members, consistent nevertheless with the laws of the province; and to keep books wherein shall be recorded the proceedings of the chamber at large.

Art. 9th

The corporation to have power to publish any rules and regulations not requiring the sanction of law, which they may make from time to time, by virtue of their charter, for the benefit of trade, in order that the same may be publickly known throughout the province.

Council Office
3rd April 1777

a copy.
J. WILLIAMS.

ORDINANCES PASSED IN THE SESSION OF THE LEGISLATIVE COUNCIL OF QUEBEC THAT WAS HELD IN JANY, FEBY, MARCH, & APRIL 1777—[1]

1. For Establishing Courts of Civil Judicature in the Province of Quebec.
2. To regulate the Proceedings in the Courts of Civil Judicature in the Province of Quebec.
3. For ascertaining Damages on protested Bills of Exchange, and fixing the Rate of Interest in the Province of Quebec.
4. For regulating the Markets of the Towns of Quebec and Montreal.
5. For establishing Courts of Criminal Jurisdiction in the Province of Quebec.
6. Declaring what shall be deemed a due Publication of the Ordinances of the Province.
7. To prevent the selling of strong Liquors to the Indians in the Province of Quebec, as also to deter Persons from buying their Arms or Cloathing, and for other Purposes relative to the Trade and Intercourse with the said Indians.
8. For regulating the Militia of the Province of Quebec, and rendering it of more general Utility, towards the Preservation and Security thereof.
9. For regulating the Currency of the Province.
10. Concerning Bakers of Bread in the Towns of Quebec and Montreal.
11. For repairing and amending the public Highways and Bridges in the Province of Quebec.
12. Empowering the Commissioners of the Peace to regulate the Prices to be paid for the Carriage of Goods, and the Passage of Ferries in the Province of Quebec.
13. For Preventing Accidents by Fire.
14. For preventing Persons leaving the Province without a Pass.
15. To empower the Commissioners of the Peace to regulate the Police of the Towns of Quebec and Montreal for a limited Time.
16. Concerning the Distribution of the Estates and Effects of Persons leaving the Province without paying their Debts.

[1] This list of Ordinances—the first passed after the Quebec Act—was also enclosed in Carleton's letter of May 9th. Canadian Archives, Q 13, p.103. Nos. 1, 2, & 5 are given in full below, pp. 464 et seq.

(Copy.)

AN ORDINANCE FOR ESTABLISHING COURTS OF CIVIL JUDICATURE IN THE PROVINCE OF QUEBEC.[1]

Preamble.

Whereas it is necessary to establish Courts of Civil Judicature for the speedy Administration of Justice within this Province; It is therefore Ordained and Enacted by His Excellency the Captain General, and Governor in Chief of this Province, by and with the Advice and Consent of the Legislative Council of the same, That,

Division of the Province into Two Districts.

Art. 1. For the Ease and Convenience of His Majesty's subjects residing in different Parts of this Province, the same shall be and hereby is divided into Two Districts, to be called and known by the names of Quebec and Montreal, which said Districts shall be divided and bounded by the River Godfroy on the South, and by the River S^t Maurice on the North side of the River S^t Lawrence.

Establishment of a Court of Common Pleas for each District; to sit one day at least in every Week, in matters exceeding £10 Sterling, & another day in matters of or under that Sum; except in Vacation Times.

Art 2. A Court of Civil Jurisdiction, to be called the Court of Common Pleas, shall be, and hereby is erected, constituted, and established for each of the said Districts, the one whereof shall sit at the City of Quebec, and the other at the City of Montreal, at least one Day in every week, for the decision of Causes in which the Value of the matter in Dispute shall exceed Ten Pounds Sterling; and another Day in every week for the Decision of Causes in which the matter in Dispute shall be of or under the Value of Ten Pounds Sterling, and shall so continue their Sittings throughout the whole Year, excepting Three Weeks at Seed Time, a Month at Harvest, and a Fortnight at Christmas and Easter, and except during such Vacations as shall be appointed by the Judges for making their Circuits Twice Every Year through their separate Districts. The said Courts shall have full Powers, Jurisdiction, and Authority, to hear and determine all matters of Controversy relative to Property and Civil Rights, according to the Rules prescribed by an Act of Parliament made and passed in the Fourteenth Year of the Reign of His Present Majesty, intituled, "An Act "for making more effectual Provision for the Government of the Province "of Quebec, in North America," and such Ordinances as may hereafter be passed by the Governor and Legislative Council of the said Province.

Rule of Decision

Two Judges necessary to make a Court. Their Decision to be final in matters under £10 Sterling except in certain Cases: In which excepted Cases, and in matters above that value, Appeal to be to the Governor and Council. Giving good security.

Art 3. In matters above the Value of Ten Pounds Sterling, the Presence of Two Judges shall be necessary to constitute a Court of Common Pleas; the Decision of which Court shall be final in all cases where the matter in Dispute shall not exceed the Value of Ten Pounds Sterling, except in matters which may relate to taking or demanding any Duty payable to His Majesty, or to any Fee of Office, or Annual Rents, or other such like matter or Thing, where the Rights in future may be bound, in which Cases, and also in all Matters that exceed the said Value of Ten Pounds sterling, an Appeal shall lie to the Governor and Council; provided Security be duly given by the Appellant, that he will effectually prosecute the same, and answer the Condemnation; as also pay such Costs and Damages as shall be awarded, in case the Judgment or Sentence of the Court of Common Pleas shall be affirmed.

The Governor and Council made a Court of Appeals.

Art 4. The Governor and Council are hereby erected and constituted a Superior Court of Civil Jurisdiction (whereof in the absence of the Governor and Lieutenant Governor, the Chief Justice shall be President) for hearing and determining all Appeals from the inferior Courts of Civil

[1] Canadian Archives, Q 62 A—2, p. 586. This and the two following ordinances are framed in accordance with the 14th and 15th articles of the instructions to Governor Carleton, 1775. See pp. 423 & 424.

The Governor, Lieutenant Governor, or Chief Justice with any Five Members to constitute a Court.

Jurisdiction within the Province, in all cases where the matter in Dispute shall exceed the Sum of Ten Pounds Sterling, or shall relate to the taking or demanding any Duty payable to His Majesty, or to any Fee of Office or Annual Rents, or other such like Matter or Thing, where the Rights in future may be bound, though the immediate Sum or Value appealed for be less than Ten Pounds Sterling. And any Five Members of the said Council (the Judges who shall have given the Judgment appealed from excepted) with the Governor, Lieutenant Governor, or Chief Justice, shall constitute a Court for that Purpose, which shall sit the first Monday in every Month throughout the year, and continue sitting each Month as long as the Business before it may require: And the said Court of Appeals shall have Power to revise and examine all the Proceedings in the Court below, and to correct all errors both in Fact and in Law, and to give such Judgment as the Court below ought to have given, and on Judgment to award and issue such Execution as the Law shall direct.

The Judgment of the Said Court to be final in all matters not exceeding the value of £500 Sterling.

Appeals allowed in matters above that Value to His Majesty in Council.

Art 5. The Judgment of the said Court of Appeals shall be final in all cases where the matter in Dispute shall not exceed the Value of £500 Sterling; but in all cases exceeding that Value, an Appeal shall lie to His Majesty in His Privy Council, provided security be first duly given by the Appellant, that he will effectually prosecute his Appeal, and answer the Condemnation, as also pay such Costs and Damages as shall be awarded by His Majesty in His Privy Council, in case the Sentence of the said Court of Appeals shall be affirmed. An Appeal shall likewise lie to His Majesty in His Privy Council from the Judgment of the said Court of Appeals in all cases where the matter in Question shall relate to the taking or demanding any Duty payable to His Majesty, or to any Fee of Office, or Annual Rents, or any such like matter or Thing, where the Rights in future may be bound, though the immediate Sum or Value appealed for be less than £500 Sterling; and in all cases where Appeal shall be allowed to His Majesty in His Privy Council, Execution shall be suspended until the final determination of such Appeal, provided Security be given as aforesaid.

Other Cases in which Appeal shall be allowed to His Majesty in Council.

Judgments Sentences and Execution of the Courts of Civil Jurisdiction, established since the 1st of May 1775, confirmed; subject to an Appeal.

Art 6. All Judgments, Sentences and Executions of the Courts of Civil Jurisdiction, which it has been found necessary to establish since the 1st May 1775, are hereby ratified and confirmed,[1] subject nevertheless to an Appeal to the said Court of Appeals, in matters exceeding the value of Ten Pounds Sterling, and in Cases where Rights in future may be bound.

Appeal from the Judgments of all the Courts heretofore established to be prosecuted within Three Months.

Art. 7. Any Party meaning to Appeal from any Judgment, either of the said last-mentioned Courts, or of the Courts of Civil Jurisdiction subsisting in the Province before the 1st of May 1775, shall sue out the Writ of Appeal within Three Months after the Publication of this Ordinance, after which Period the same will not be allowed.

All Matters undetermined in any former Court of Appeals to be transmitted to the Court of Governor and Council.

Art 8. All Actions instituted in any of the Courts of Civil Jurisdiction subsisting in the Province before the 1st of May 1775, or in those established since the 1st of May 1775, and remaining undetermined therein, shall be transmitted to the Courts of Common Pleas hereby established for the respective Districts, to be proceeded upon to Judgment, as if the same had been commenced therein; also all Matters remaining undetermined in any Court of Appeals heretofore subsisting in this Province shall be forthwith transmitted to the Court of Appeals hereby established, to be proceeded upon therein to Judgment and Execution.

GUY CARLETON

[1] The Quebec Act coming into force May 1st, 1775, "all and every the Ordinance and Ordinances made by the Governor and Council of Quebec for the time being relative to the Civil Government and Administration of Justice in the said Province, and all Commissions to Judges and other Officers thereof, be, and the same are hereby revoked, annulled, and made void from and after the first day of May, one thousand seven hundred and seventy-five." (Clause 4.) But as the invasion of the Province had prevented the assembling of the Council and the framing of new ordinances, the legal system had to be placed upon a provisional basis for the time being. See Carleton to Germain Aug. 10th, 1776, Q 12, pp. 119, 124, 131.

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Ordained and Enacted by the Authority aforesaid, and passed in Council, under the Great Seal of the Province at the Council Chamber in the Castle of S[t] Louis, in the City of Quebec, the 25[th] day of February, in the seventeenth year of the Reign of our Sovereign Lord George the Third, by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith and so forth, and in the year of our Lord 1777.

By His Excellency's Command
J: WILLIAMS
C.L.C.

(Copy)

Cap. II.

AN ORDINANCE TO REGULATE THE PROCEEDINGS IN THE COURTS OF CIVIL JUDICATURE IN THE PROVINCE OF QUEBEC.[1]

Preamble. Whereas it is necessary for the Ease and Convenience of His Majesty's subjects who may have Actions to prosecute in the Courts of Civil Judicature established in this Province, that the mode of Administering Justice in the said Courts should be clearly ascertained, and rendered as plain as possible: It is therefore Ordained and Enacted by his Excellency the Captain General and Governor in Chief of this Province, by and with the Advice and Consent of the Legislative Council of the same, That

Manner of proceeding in Actions above the Value of £10. Sterling. Suing out the Summons. Art. 1. In all cases or Matters of Property, exceeding the Sum or Value of £10 Sterling, upon a Declaration presented to any one of the Judges of the Court of Common Pleas, by any Person, setting forth the Grounds of his Complaint against a Defendant, and praying an Order to Compel him to appear and answer thereto, such Judge shall be, and hereby is empowered and required in his separate District to grant a Writ of Summons in the Language of the Defendant, issuing forth in His Majesty's Name, tested and signed by one of the Judges, and directed to the Sheriff of the District, to summon the Defendant to appear and answer the Plaintiffs Declaration on some certain future day, Regard being had to the Distance of the Defendant's abode from the Place where the Court sits; but if the Judges, or any Two of them are satisfied, by the Affidavit of the Plaintiff, or otherwise, that the Defendant is indebted to him, and on the point of leaving the Province, whereby the Plaintiff might be deprived of his Remedy against him; it shall be lawful for the said Judges, or any Two of them, to grant an Attachment against the Body of such Defendant, and hold him to Bail, and for Want of Bail to commit him to Prison until the Determination of the Action against him: The Declaration shall in all cases accompany the Writ, and the Plaintiff shall not be permitted to amend it until the Defendant shall have answered the matter therein contained, nor afterwards, without paying such reasonable Costs as the Court may ascertain.

Attachment against the Body where a Debtor is going to leave the Province. Declaration to accompany the Writ.

Service thereof. Art 2. Copies both of the Writ of Summons, and the Declaration, shall be served on the Defendant personally, or left at his House with some grown Person there, otherwise the Service shall be deemed insufficient.

If Defendant does not appear. Art 3. If on the Day of the Return of the Writ of Summons the Defendant does not appear in Person, or by Attorney (Proof of such Service being produced or made in Court) the Plaintiff shall obtain a Default against the Defendant, and if on Calling over the Action in the next Weekly Court Day the Defendant should still neglect to appear, without any good Reason

[1] Canadian Archives, Q 62 A—2, p. 568.

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for such his Neglect, the Court after hearing and receiving sufficient Proof of the Plaintiff's Demand, shall cause their final Judgment to be entered against the Defendant, and shall award such Costs thereupon as they shall think reasonable, and issue such Execution as the Law, according to the nature of the case, may direct.

Judgment to be entered.

If Defendant appears, he is to answer the Declaration.

Art 4. If Defendant appears at the Return of the Writ of Summons, or, having made Default on that Day, pays such Costs as the Court may think reasonable, and appears on the next Weekly Court Day after such Return, he shall, either then, or on such other Day as he may obtain from the Court, make his Answer to the Declaration, either in Writing or Verbally as he thinks fit, provided that if his Answer is Verbal the Clerk of the Court shall take down the substance thereof in writing, and preserve the same amongst the Records of the Court.

If the Plaintiff does not attend the action to be dismissed with Costs.

If the Plaintiff does not appear, or appearing does not prosecute his Action, the same shall be dismissed with Costs.

If the Parties differ in their State of Facts, Court shall ascertain the Facts necessary to be proved.

Art 5. If upon the Declaration and Answer, or such further Pleadings as the Court may, if it thinks proper, permit or direct, the Parties shall appear to differ essentially in their State of Facts, the Court shall ascertain and order the Clerk to take down in Writing, such Facts, material to the Decision of the Cause as it will proceed to receive Proof upon, and appoint a Day for hearing such Proofs as the Parties shall think proper to produce.

Manner of examining Witnesses; their Examinations to be taken down in Writing.

Art 6. In all Cases where Witnesses are produced they shall be examined and Cross Examined, viva voce, in Open Court, unless some good Reason is shewn to the Judges for departing from this Rule in particular Cases. The Examinations of the Witnesses shall be taken down in Writing by the Clerk, and filed among the Records of the Court.

English Rules of Evidences adopted in Commercial Cases.

Art. 7. In the Proof of all Facts concerning Commercial Matters Recourse shall be had in all the Courts of Civil Jurisdiction in the Province, to the Rules of Evidence laid down by the English Laws.[1]

Of Appeals. Party appealing to sue out a Writ, commanding the Judges to send up the Record.

Art. 8. The Party meaning to Appeal from any Sentence or Judgment of any of the Courts of Common Pleas, shall sue out a Writ from the Court of Appeals, tested and signed by the Governor, Lieutenant Governor, or Chief Justice, stating that the Appellant complains of being aggrieved by the Judgment, and therefore commanding the Judges of the Inferior Court, or any Two of them, to send up the Original Papers and Proceedings in the Cause, and Transcripts of all Rules, Orders and Proceedings found in the Records or Registers of the Court concerning the same; such Writ, when presented to any of the Judges of the Court below, shall be allowed by him, if the Appellant has given the requisite Security, and when allowed, the Clerk of the Court shall proceed to comply with the Order of the Writ, and the Judges, or any Two of them, shall make their Return against the Return Day thereof.

The Appellant to file his reasons of Appeal in Eight Days.

Art 9. If the Appellant does not within Eight Days after the Return of the said Writ, and the Transmission of the Proceedings, file his Reasons of Appeal, the Appellee shall obtain a Rule or order, that unless the Appellant's Reasons of Appeal are filed in Four Days, the Appeal will be dismissed, and if the said Reasons of Appeal are not filed within Four Days after Service of the said Rule on the Appellant or his Agent, the Appeal shall accordingly be dismissed with Costs.

Appellee to file his answers in Eight Days.

Art 10. Within Eight Days after the Reasons of Appeal are filed, the Appellee shall file his answers thereto, or if he neglects so to do the Appellant shall obtain a Rule or Order, that unless the Appellee file his Answers within Four Days he will be precluded from filing them after that Period; and if his Answers are not filed within Four Days after Service of such

[1] Concerning this partial introduction of the English law in civil matters, notwithstanding the general policy of the Quebec Act, see article 12 of the Instructions to Carleton, 1775, p. 422.

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Rule on the Appellee or his Agent, he shall accordingly be precluded from filing them, and the Court will proceed to hear the Cause on the part of the Appellant, and proceed to Judgment therein without the Intervention of the Appellee.

The Court, on good Cause Shewn, to prolong the Time above allowed

Art 11. The said Court of Appeals nevertheless shall and may, upon Application made, and good cause shewn by either of the Parties (Notice being given the other) prolong the Time allowed for filing either the Reasons of Appeal or Answers thereto, and in case the Court shall not be sitting at the Time when such Reasons or Answers ought regularly to be filed, the Party neglecting shall apply to the Court, at the next sitting thereof, and shew his Reasons for such his Neglect: and if the Court finds them insufficient, it will, as the case may be, either dismiss the Appeal, or proceed to hear it without the Intervention of the Appellee, as above directed.

Day to be fixed for hearing the Cause.

Art 12. When the Reasons of Appeal, and Answers thereto, are filed, the Court shall, on the Application of either of the Parties, fix on such convenient Day for the hearing of the Cause as to it may seem proper.

In Fifteen days after Judgment, execution to issue in case the Writ of Appeal be not allowed. No Appeal allowed after a Year from the Date of the Judgment.

Art 13. If the Writ of Appeal is not allowed by one of the Judges of the Court below, and a Copy thereof served on the Appellee or his Agent within Fifteen days after any Judgment given in the Court of Common Pleas, Execution shall issue, and no Appeal shall be allowed or received from the Court of Common Pleas after the expiration of one Year from the Date of the Judgment of such Court.

Of Executions, nature of the Writ of Executions.

Art 14. The Executions sued out from any of the Courts of Civil Jurisdiction shall be a Writ issuing in the King's Name, tested and signed, when issuing from the Court of Appeals, either by the Governor, Lieutenant Governor, or Chief Justice, and when issuing from the Court of Common Pleas, by one of the Judges of the Court for the District in which it is given, directed to the Sheriff of the District, setting forth the Judgment of the Court between the Parties, and the kind of Execution which the Law, according as the case may be, shall direct, whether the same be to take the Body, or to levy a Sum of Money out of any one's Goods and Chattels, Lands and Tenements, or to do any Special matter or Thing whatever; the Date of the Judgment shall be indorsed on every Writ of Execution, and that Indorsement signed by the Judge.

Personals to be first disposed of, and if insufficient, Real Estate to be sold.

Art 15. In all Cases where execution shall issue against Real and Personal Estates, the Sheriff shall first dispose of the Personal Property, and if the Proceeds thereof fall short of the Amount of the Judgment the Real Estate, or so much thereof, as will produce the Amount, shall be sold for that Purpose.

Manner of selling Personals.

Art 16. Where Moveables shall be seized by the Sheriff under an Execution, he shall cause the seizure to be published at the Church Door, of the Parish, immediately after Divine Service, on the first Sunday succeeding such Seizure, and at the same time cause to be proclaimed the Day and Place when and where he intends to proceed to the sale thereof, provided that the Place of Sale shall be in the same Parish in which the Seizure made.

Manner of selling Real Property.

Art 17. When Lands and Tenements shall be seized by the Sheriff under a Writ of Execution, he shall advertize the Sale thereof Three Several Times in the Quebec Gazette, to be on some certain Day after the expiration of Four Months from the Date of the First Advertisement, and proclaim the said Sale at the Church Door of the Parish in which the Premises are situated, immediately after Divine Service, on the Three Sundays next preceding the same and Cause a Copy of the said Advertisement to be fixed on the Door of the Parish Church.

When Two or more Writs of Execution is-

Art 18. If Two or more Writs of Execution shall be issued upon Judgments given the same Day against the same Defendant or Defendants, and

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sue upon Judgments given the same Day, they are to be satisfied in the same Proportions.

so marked on the Writs, such Executions shall have the same Privilege and be satisfied in the same Proportions, and the Sheriff, or other Person to whom such Writs of Execution shall be Awarded, receiving the same, is hereby authorized and Commanded, after the sale of the whole of such Defendant's Real and Personal Estate, where the Writ shall be awarded against both, in case the same should not be sufficient to satisfy the whole of such Judgments, to pay over and divide the Nett Produce of such sale or Sales, after deducting his own Costs and Charges, amongst the several Plaintiffs, in Proportion to the Amount of their Respective Judgments.

Allowance to the Sheriff.

Art 19. On every Execution the Sheriff shall be allowed all his Disbursements, and shall be authorized to charge over and above at the Rate of Two and an Half per centum, to be deducted out of the Money he levies.

Art XX

Proceedings in Actions under £10 Sterling

In Matters either not exceeding or under Ten Pounds Sterling, any Person having a Right of Action against another, shall prepare, or procure from the Clerk of the Court of Common Pleas, a Declaration in the following Form.

" Quebec/Montreal Day of 17

" A. B. Plaintiff. C. D. Defendant.—The Plain-
" tiff demands of the Defendant the Sum of due to the Plaintiff
" from the Defendant, for which said Sum, though often demanded,
" still remains due, therefore the Plaintiff prays Judgment."

The Declaration shall be filed by the Clerk, who shall make a Copy thereof, and at the Foot of such Copy write out a Summons in the Language of the Defendant in the following Form, viz.

" To C. D. the Defendant in the Above Action—
" You are hereby commanded and required to pay the Plaintiff A. B. the
" above-mentioned Sum of together with Costs, or else to
" appear in Person, or by Your Agent, before me, at the Court House in
" the City of Quebec/Montreal together with your Witnesses, if you have any, on the
" Day of when the matter of Complaint against you
" as ascertained in the above Declaration will be heard and finally deter-
" mined, otherwise Judgment will be given against you by Default—E. F.
" Judge of the Court of Common Pleas."

This Summons shall be signed by one of the Judges of the Court, and a Copy thereof, and of the Declaration, served on the Defendant Personally, or left at his Dwelling House, or Ordinary Place of Residence, with some grown Person there; and the Person serving the same shall inform the Defendant, or such grown Person, of the Contents thereof. If, at the Time mentioned in the Summons, the Defendant does not appear (Proof of the Service thereof being produced in Court) the Judges, or any one of Them shall hear the cause on the part of the Plaintiff, and make such order, Decree, or Judgment, and award such reasonable Costs of Suit, as to them or him shall appear agreeable to Equity and good Conscience; but if the Defendant does not appear by himself, or his Agent, and the Plaintiff, or his Agent, does not appear, or appearing does not Prosecute, or prosecuting, fails in his Action, the Judge or Judges shall dismiss the Defendant with Costs. If the Plaintiff makes good his Charge against the Defendant, the Judge or Judges shall give Judgment accordingly, and award Costs and Execution, but the Execution shall not issue till the next Court Day after Judgment given: the Execution shall go against the Moveables only of the Defendant, which shall be seized by some Person to be for that Purpose appointed by the Court, and sold by him in the manner mentioned in the Sixteenth Article of this Ordinance. But the Execution shall contain an

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Exception of the Party's Beasts of the Plough, Implements of Husbandry, Tools of his Trade, and one Bed and Bedding, unless his other Goods and Chattels should prove insufficient, in which Case such Beasts of the Plough, Implements of Husbandry and Tools of his Trade, shall be sold, but not the Bed and Bedding. The Judge or Judges, may, if they think proper, order the Debt to be levied by Installments, provided the Time allowed shall not exceed the Space of Three Months from the Day of issuing the Execution.

Art XXI.

In Matters, as well above as of or under the Value of Ten Pounds Sterling, if the Defendant shall convey away or secrete his Effects, an Execution shall go against his Person, to be taken and detained in Prison until he satisfies the Judgment.

Art XXII.

For the Satisfaction of all Judgments given in Commercial Matters between Merchants, as well as of all Debts due to Merchants for Goods, Wares, and Merchandizes, by them sold, Execution shall issue not only against the Goods, Chattels, Lands, and Tenements of the Defendant, but also, in case they shall not produce the Amount of the Plaintiff's Demand, against his Person, to be taken and conveyed into the Prison of the District, and there detained until he pays the Amount of the Judgment, or otherwise settles with and satisfies the Plaintiff: Provided, that if the Defendant after remaining one month in Prison, shall make Application to the Court, and make an Affidavit that he is not worth Ten Pounds, the Plaintiff shall pay to the Defendant the Sum of Three Shillings and Sixpence weekly, for his Maintenance as long as he shall be detained in Prison at the Suit of the Plaintiff; such Payment shall be made in Advance on Monday in every Week, in Failure of which the Court from whence the Execution issued shall order the Defendant to be released; but the Plaintiff shall not be obliged to make such Payment, if he can prove, to the Satisfaction of the Court by which the Defendant stands committed, that the Defendant has secreted or conveyed away his Effects to defraud his Creditors.

Art XXIII.

When any Person against whom Judgment shall be given in any of the Courts of Common Pleas shall not have sufficient Goods, Chattels, Lands, or Tenements, to satisfy such Judgment within the Jurisdiction of the Court wherein such Judgment shall have been obtained, but shall have Goods, Chattels, Lands or Tenements within the Jurisdiction of the other Court of Common Pleas, it shall be lawful for the Judge or Judges of the Court wherein Judgment shall have been obtained to award Execution to the Sheriff of the other District, who, after getting the Writ indorsed by one of the Judges of the Court for the District in which the Goods, Chattels, Lands, or Tenements are situated, shall execute the same, and make Return thereof to the Court from which it issued; and such Writ and Return shall be by him sent to the Sheriff of the District from whence the Writ was originally awarded, to be delivered into the Court that issued the same.—The Sheriff executing such Writ shall be answerable for his Doings relative thereto before the Court from which it was originally awarded; and the Judges of the Court of Common Pleas for the one District may, in like manner, award Execution against the Body of a Person residing in the other in Cases where such Execution is by Law allowed; and the Sheriff executing the Writ to him in such case directed shall convey the Body of

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such Person into the Prison of the District wherein such Person shall be arrested.

Art XXIV.

This Ordinance, and the several Provisions and matters therein contained, shall remain in Force only during the Space of Two Years from the Publication thereof.

GUY CARLETON.

Ordained and Enacted by the Authority aforesaid, and passed in Council under the Great Seal of the Province, at the Council Chamber in the Castle of S[t] Lewis in the City of Quebec, the Twenty fifth day of February, in the seventeenth year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France and Ireland, King Defender of the Faith and so forth, and in the Year of our Lord One thousand seven hundred and seventy seven.

By His Excellency's Command

J: WILLIAMS
C.L.C.

AN ORDINANCE FOR ESTABLISHING COURTS OF CRIMINAL JURISDICTION IN THE PROVINCE OF QUEBEC.[1]

It is Ordained and Enacted by His Excellency the Captain General and Governor in Chief of this Province, by and with the advice and consent of the Legislative Council of the Same, That,

Art. I.

Establishment of a Supreme Court of Criminal Justice, to be held before the Chief Justice or Commissioners for executing that Office.

There shall be, and hereby is erected, constituted and established for the Province at large, a Supreme Court of Criminal Justice and Jurisdiction, to be called and known by the name of the Court of King's Bench, for the Cognizance of all Pleas of the Crown, and for the Trial of all manner of Offences whatsoever; the said Court shall be held before the Chief Justice of the Province, or Commissioners that may be appointed for executing the Office of Chief Justice for the Time being, who shall hear and determine the said Pleas of the Crown, and of all manner of Offences whatsoever, according to the Laws of England, and the Ordinances of the Government and Legislative Council of the Province.

Four Sessions; Two at Quebec Two at Montreal. Times of Sitting. Special Commissions to be issued if necessary.

And for the Speedy Administration of Justice, and the preventing long Imprisonments, there shall be held, in every Year, Four Sessions of the said Court of King's Bench, whereof Two Sessions shall be held at the City of Quebec, and the other Two at the City of Montreal, at the Times hereafter following, to wit, at the City of Quebec on the First Tuesday of May and the First Tuesday of November, and at the City of Montreal on the First Monday of March and the First Monday of September in every year: but nothing herein contained shall extend to prevent the Governor, Lieutenant Governor, or Commander in Chief for the Time being, to issue Commissions of Oyer and Terminer and Gaol Delivery at any other Time or Times, when he may think it necessary and expedient so to do.

[1] Canadian Archives, Q 62 A—2, p. 594.

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Art. II.

Establishment of the Court of Quarter Sessions.

In each of the Districts of Quebec and Montreal, there shall be held and kept, Four Times in every Year, a Court of General Quarter Sessions of the Peace, by the Commissioners of the Peace of each respective District, or so many of them as are or shall be limited in the Commission of the Peace, who shall hear and determine all matters relative to the Conservation of the Peace, and whatsoever is by them cognizable, according to the Laws of England, and the Ordinances of the Governor and Legislative Council of the Province.

Places and Times of Sitting.

The said Sessions for the District of Quebec, shall be held at the City of Quebec, and the said Sessions for the District of Montreal shall be held at the City of Montreal, on the days hereafter following, to wit, on the second Tuesdays of the Months of January, April, July and October, in every year.

Two Commissioners to sit weekly.

And Two of the said Commissioners of the Peace shall sit weekly in Rotation, in the Cities of Quebec and Montreal, for the better Regulation of the Police, and other matters and Things belonging to their Office; and the names of the Commissioners who are to sit in each Week shall be posted up on the Door of the Sessions House, by the Clerk of the Peace, Two Days before their respective Sittings.

Art. III.

Captains of Militia impowered in their respective Parishes to act as Coroners.

As the great extent of this Province may render it often impracticable for the Coroner of the District to give his attendance at the different Places where it might be necessary, the Captains of Militia shall be and hereby are impowered, in their respective Parishes, when any marks of Violence appear on any dead Body, to summon together Six respectable Householders of his Parish, to inspect the same; and he shall, according to their Opinion, report the manner and cause of such Death in writing, to the nearest Commissioner of the Peace, that a further examination may be made therein, if necessary.

Art. IV.

Captains of Militia appointed Peace Officers in their respective Parishes.

And as great Inconveniences might arise from the want of Peace Officers in different parts of the Province, the said Captains of Militia shall be and hereby are impowered to arrest any Person guilty of any Breach of the Peace, or any Criminal offence, within their respective Parishes, and to convey or cause to be conveyed, such Person before the nearest Commissioner of the Peace, to be dealt with according to Law.

(signed)

GUY CARLETON

Ordained and Enacted by the Authority aforesaid, and passed in Council under the Great Seal of the Province at the Council Chamber, in the Castle of S[t] Lewis, in the City of Quebec, the Fourth Day of March, in the seventeenth year of the Reign of our Sovereign Lord George the Third, by the Grace of God of Great Britain France and Ireland, King, Defender of the Faith and so forth, and in the Year of Our Lord One thousand seven hundred and seventy seven.

By His Excellency's Command.

J: WILLIAMS
C.L.C.

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PETITION OF MERCHANTS FOR REPEAL OF QUEBEC ACT.[1]

To The Right Honorable Lord George Germain, One of His Majesty's Principal Secretaries of State, &c &c &c

The Petition of the Merchants & such Inhabitants of the Province of Quebec as are at present in London– – Sheweth,

That His Majesty's British subjects in that extensive Colony apprehending the inconveniences which have since really arisen from the operation of an act of Parliament passed in the Year 1774 for establishing the Government of the Province of Quebec, did in the same year Petition his Majesty, and both Houses of Parliament, that it might be repealed or at least amended.[2]

We beg leave to inform your Lordship, that from the reduction of Canada till May 1775 when the above mentioned act took place, the inhabitants as well Canadians as English lived with great satisfaction in the enjoyment of their liberty and Property under the Protection of the English Government, and that they received the new regulations contained in the act with surprize, and reluctance; for them saw themselves at once deprived of that inestimable priviledge of the English constitution, that grand Bulwark against Injustice and Oppression, the trial by Juries, and of the benefit of the Commercial Laws of England, so wisely calculated to promote a spirit of Trade and Industry and so generally known and understood; instead of which they found themselves obliged to have recourse to the Laws of Canada scarcely, if at all, understood by any Pers n in the Province, and consisting chiefly of occasional Mandates issued, from time to time, by the French Governors. In consequence of this subjection to the arbitary command of their superiors, many of the Canadians have been ordered out upon the public Service, without any pay or emolument whatever, and upon refusal have been thrown into prison under a Military Guard.[3] It cannot be wondered at if under such circumstances, Discontents, and even Dissatisfaction to his Majesty's Government should have crept in.

The ordinances lately made by the Governor and Council, in aid of the French Law, have contributed to increase the General dissatisfaction. This Council, when only twelve members were present,[4] and each of them bound by an Oath of Secrecy, proceeded to make laws without requiring the least Information, and with the most Total disregard of an Application from the Merchants who petioned, upon Grounds of general utility, that they might not be deprived of the Mercantile Laws of England.

The Ordinances furnish further matter of Complaint because of the ambiguous terms in which they are expressed, of the indefinite Power which they give to the Judges, and of the Prejudice which prevails in them, without exception, in favor of the Laws of Canada, whose forms are tedious, expensive and unnecessary. In particular the ordinance regulating the Indian Trade,[5] without yielding any revenue or advantage whatever to Government, subjects the Trader to insuperable Difficulties, for the pass he obtains is upon Conditions frequently out of his Power to comply with, and his whole Property is in consequence liable to confiscation, by the civil or seizure by the military

1 Canadian Archives, Haldimand Papers, B 43, p. 13.

2 Referring to the petitions of Nov. 12th, 1774. See pp. 414 & 417.

3 Referring to the restoration of the French feudal system under the Quebec Act, and the consequent exaction of corvées and other compulsory services. See notes 1 and 2, p. 461. See also Burgoyne to Carleton, as to enforcing corvées; Q. 13, p. 212.

4 Four members of the Council had been captured and were prisoners in the colonies. See Q 12, p. 172. Some of the others were absent, and one or two had died. In Carleton's letter to Germain, of June 27th, 1777, he stated that, having found a sufficient number of Councillors in the Province to proceed upon the business of legislation, he had not nominated any others.

5 Being No. 7 in the list given on p. 463. This is given in full in, "Ordinances made and passed by the Governor and Legislative Council of the Province of Quebec. And now in Force in the Province of Lower Canada. Quebec, 1795." p. 9. The portion more particularly complained of is section V, which requires every trader among the western Indians to have a pass, in default of which he is subject to a penalty of £50. Conviction may be secured on the testimony of one credible witness, other than the informer who is to receive one half the penalty.

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power, upon an information laid against him by any person tempted by a prospect of the reward. Nor though the information be false, is there any provision to redress the Trader, though he may be equally ruined by the Expence, and the delay of his Journey in the proper Season. These difficulties are so alarming that though this Trade is by far the most considerable in the Province since the commencement of the Present Rebellion, whenever the communication from Albany shall be open a great part of it will be carried on from the Province of New York, notwithstanding the situation of Canada be in all respects more convenient.

We beg leave to assure your Lordship that these causes originating chiefly from the Quebec act, have concurred to spread a general discontent throughout the Province, without any advantage to the present state, and so far as to alienate the affections of His Majesties subjects as to give great reason to apprehend a disposition in them to change their present form of Government, should such an Opportunity unhappily offer.

We therefore humbly entreat your Lordship to take into your consideration the dangerous, and confused situation of this Colony, and grant us your Patronage and assistance in endeavouring to obtain a repeal of the Quebec Act, the Source of these grievances and an Establishment, in its stead, of a free Government by an assembly or Representation of the People, agreable to His Majesty's Royal Promise contained in the Proclamation made in the year 1763. This measure alone, which we are firmly persuaded is founded equally on the Principles of Justice and good Policy is adapted to conciliate the minds of a dissatisfied People, to confirm their wavering Disposition, and to restore that mutual confidence between the Governors and the Governed which is essentially necessary to the happiness of both. (signed)

London 2 April 1778.

Wm Smith	Wm Lindsay	Chas Grant
Josiah Blackley	Jno Shannan	Alexr Davidson
John Macdonald	Edwards Watts	Adam Lymburner
William Grant	Danl Sutherland	Thos Aylwin
Wm Aird	Charles Paterson	John Salmon
Isaac Todd	James Finlay	John Paterson
William Shaw	Allan Paterson	Jean H. D. Hemair
	Alexr Fraser	Robt M. McWilliams
		John Pagan
		Randle Meredith

INSTRUCTIONS TO GOVERNOR HALDIMAND.[1]

(L.S.) George R.

Instructions to Our Trusty and Welbeloved Frederick Haldimand Esquire, Our Captain General & Governor in Chief in & over Our Province of Quebec in America & of all Our Territories dependant thereupon, Given at Our Court at St James's the Fifteenth day of April 1778. In the Eighteenth Year of Our Reign.—

First. With these Our Instructions You will receive Our Commission under Our Great Seal of Great Britain, constituting you Our Captain General & Governor in Chief in and over Our Province of Quebec in America, & all Our Territories thereunto

[1] Canadian Archives, M. 230, p. 213. For some time there had been an obvious lack of harmony between Germain and Carleton, but when Burgoyne was selected instead of Carleton to conduct the expedition to Albany, the latter's indignation knew no bounds and his despatches to his chief, the Colonial Secretary, became anything but respectful. Thus, though Carleton was in favour at Court, it was decided to remove him. The King, in writing to Lord North and referring to a subsequent appointment for Carleton, says, "Carleton was wrong in permitting his Pen to convey such asperity to a Secy of State, and therefore has been removed from the Govt of Canada. But his meretorious defence of Quebec made him a proper object of military reward, and as such I cd not provide for any oer Genl till I had paid the Debt his services had a right to claim." Brougham's "Statesmen of the Time of George III." p. 107. It was not, however, so easy to find a suitable successor for Carleton. On Feb. 24th, 1777, the King writes to North,—"Ld G. G. will tomorrow propose Clinton for Canada," ibid. p. 97. This proposal however was not realized. Meantime

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belonging, bounded & described, as in Our said Commission is set forth; in Execution therefore of the Trust We have reposed in you, You are to take on You the Administration of the Government, & to do & execute all things belonging to your Command, according to the several Powers & Authorities of Our said Commission & these Our Instructions to you, or according to such further Powers & Instructions as you shall at any time hereafter receive under Our Signet or Sign Manual, or by Our Order in Our Privy Council; and you are to call together at Quebec (which We do hereby appoint to be the Place of your ordinary Residence, & the Principal Seat of Government) the following Persons, whom We do hereby constitute & appoint to be Our Council for the Affairs of Our said Province & the Territories thereunto belonging, Viz[t] Hector Theophilus Cramahé Esq[r] Our Lieutenant Governor of Our said Province, or Our Lieutenant Governor of Our said Province for the time being, Peter Livius Esq[r] Our Chief Justice of Our said Province or Our Chief Justice of Our said Province for the time being, Hugh Finlay, Thomas Dunn, James Cuthburt, Francis L'Evesque, Edward Harrison, John Collins, Adam Mabeane, Chaussegros de Lery, George Pownall Esq[r] Our Secretary of Our said Province, or Our Secretary of Our said Province for the time being, George Alsopp, La Corne S[t] Luc, Alexander Johnston, Conrad Gugy, Picotté de Belestres, John Fraser, Henry Caldwell, John Drummond, William Grant, Rocque S[t] Ours Junior, Francis Baby, & De Longueuil Esq[rs] [1] every one of which respectively shall enjoy his Office of Councillor aforesaid for & during Our Will and Pleasure, & his Residence within Our said Province of Quebec, & not otherwise.—

(The following sections of the Instructions to Haldimand are identical with the General Instructions to Carleton of 3[d] Jan[y] 1775[2]—omitting the latter part of section 9 as shown—and adding section 16, as follows.)

16. And Whereas, in pursuance of the foregoing Instructions, Ordinances have been framed and ordained for the Establishment of Courts, and directing a proper mode of Administring Civil and Criminal Justice within Our said Province of Quebec, conformable to the Spirit and Intention of the aforesaid Act of Parliament, Intituled, "An Act for making more Effectual Provision for the Government of the Province of "Quebec in North America," It is Our Will and Pleasure that you do from time to time, with Our said Council in their Legislative Capacities, deliberate upon, and frame such Ordinances, as the Circumstances and Condition of Affairs may require, either for continuing, Amending or enforcing such Ordinances, as have been Ordained, as aforesaid, or making any further and necessary Changes and Regulations in the Courts as established, or in the mode of administering Justice within Our said Province; provided, that such Ordinances be strictly conformable to the Act of Parliament aforesaid, And to the Tenor of these Our Instructions.

endorsed: Frederick Haldimand Esq[r] Governor of Quebec Dated 15[th] April 1777. (1778).

The Usual Trade Instructions[3] were signed & dated as above.

Carleton, in his correspondence with Germain, had thrown off all restraint and was openly insulting. On the 27th of June 1777, he expressed the hope that he might be permitted to return to Britain that autumn. Burgoyne, fearing that he might be selected to follow Carleton at Quebec, in a letter to Germain, on July 30th, begs most respectfully to decline the possibility of the appointment. He in turn recommends Phillips, one of the British generals associated with him on the expedition, but is doubtful of his willingness to accept. Ultimately, Haldimand, who was then Inspector General of the forces in the West Indies, was selected for the Quebec Governorship, and informed of the fact in August. He was unable to reach Quebec before June 30, 1778, during which time Carleton retained his position. Haldimand was a Swiss soldier of fortune in the British service. He had been employed in the war for the conquest of Canada, and was in command for a time at Three Rivers and Montreal, hence he knew something of the country and its problems.

[1] By comparing this list with the corresponding one in Carleton's Instructions in 1775 (see p. 420) the number of changes which had taken place in the Council may be ascertained. Peter Livius, who succeeded Hey as Chief Justice, Aug. 1776, had been sent out in 1775 by Dartmouth who had a high opinion of his abilities and who designated him as a judge of the Common Pleas at Montreal. All the other new members had been recommended to Germain by Carleton.

[2] See p. 420.

[3] See p. 438.

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[L.S.]

George R

Additional Instruction to Our Trusty & Welbeloved Frederick Haldimand Esq[r] Our Captain General and Governor in Chief in & over Our Province of Quebec in America, & of all Our Territories dependent thereupon.--Given at Our Court at S[t] James's the Twenty Ninth day of March 1779. In the Nineteenth Year of Our Reign.

Whereas by the Second Article[1] of Our Instructions to You the Governor of Our Province of Quebec, We have thought fit to direct that any five of the Members of Our Council for that Province shall constitute a Board of Council for transacting all Business, in which their Advice & Consent may be requisite, Acts of Legislature only excepted, in which case you are not to act without a Majority of the whole And Whereas it is highly fitting & expedient that no misrepresentation of Our Royal Will & Pleasure in this Instance should continue or obtain, We do hereby direct & require that this Article shall not be understood to delegate Authority to you Our Governor to select & appoint any such Persons by Name as you shall think fit to make such Quorum, terming the same a Privy Council, or to excuse you from summoning to Council all such thereunto belonging as are within a convenient distance.--On the contrary that you do take especial Care to preserve the Constitution of Our said Province free from Innovation in this respect,[2] to which intent you shall communicate this Our Royal Will & Pleasure to our said Council, that so the Trusts, Powers & Privileges which We have thought fit to vest in them by Our General Instructions may by this express Signification of Our Purpose, be in future ascertained & confirmed

G. R.

[1] See 2nd article of Carleton's Instructions, 1775, p. 420, and which remained unchanged for Haldimand.

[2] The high-handed measures adopted by Carleton, just before the arrival of Haldimand and his own departure from the country, as evidenced by his treatment of those who dared to question his measures in Council, and his summary dismissal of the Chief Justice, left at once an unfortunate example for Haldimand and a tendency on the part of certain members of Council to resent anything like an encroachment on the rights of the Council as an essential element in the constitutional government of the colony.

Chief Justice Livius after being dismissed by Carleton returned to Britain and laid his case before the King. It was referred to the Board of Trade, who sent a copy of the memorial to Carleton, then also in London, asking him to give his reasons for the dismissal. Q 18 B, p. 125. Carleton made reply that his reasons were given in his letter to Germain of June 25th, 1778. See B 37, p. 192. He also referred to the Minutes of Council in March and April, 1778. On Dec. 15th, the Board invited both Livius and Carleton to be present and defend their cases, when Carleton declared that he had nothing further to add. On March 2nd, 1779, the Board of Trade made a very full report on the whole matter. Q 18—B, p. 131. In this they declared that nothing whatever had been brought against the professional conduct of the Chief Justice, and that therefore the Governor in dismissing him without cause had disregarded the 17th clause of his Instructions. They then reviewed the whole conduct of Mr. Livius as a member of the Council. There they found that the only possible grounds for criticism lay in two motions made by him in Council. One was, that the Governor should communicate to the Council so much of his Instructions as it was necessary for the Council to know in order that they might conform to them. As this was strictly in accordance with the 7th article of the Instructions which the Governor should already have acted upon, the Board were so far from seeing anything amiss in this that they recommended to the King a special instruction to Haldimand. (See the following instruction.) The other motion was, that, as Carleton, placing his own interpretation upon the 2nd clause of his Instructions, had formed an inner circle of the Council consisting of five members, which he designated the Executive Council, and before which all the accounts and the more important business of the Government were brought. The Chief Justice moved that an address be presented to the Governor drawing attention to this innovation and praying for a remedy. Here, too, the Board not only quite agreed with the constitutional stand taken by Livius, but recommended the sending of a further additional Instruction to Haldimand, repudiating Carleton's interpretation of the second clause of the Instructions and requiring him to discontinue the practice. This is the Instruction here given. Finally, after noting that the language of the last remonstrance of the Chief Justice might have been somewhat more careful of the dignity of the Governor, the Board of Trade completely exonerated Livius alike as Chief Justice and as a member of the Council. On July 19th, 1779, Germain sent to Haldimand a Mandamus to re-appoint Peter Livius Chief Justice of the Province of Quebec. Q 16-1, p. 62. See also Germain to Haldimand, B 43, p. 63.

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George R.

(L.S.)

Additional Instruction to Our Trusty & Well beloved Frederick Haldimand Esquire Our Captain General & Governor in Chief in and over Our Province of Quebec in America, and of all our Territories dependent thereupon. Given at our Court at S^t James's the Twenty Ninth day of March 1779 In the Nineteenth Year of Our Reign.

Whereas it is fitting, and Our Royal Purpose, that Our Council for the Province of Quebec under your Government, should be fully informed of Our Gracious Intentions in the Constitution proposed for Our said Province, to the end, that they may jointly with You Our Governor and agreably to the Powers vested in them by Act of Parliament carry Our said Intentions effectually into execution to the benefit of Our Service, & to the ease and security of all Our Subjects, Inhabitants of the said Province. It is Our Will & Pleasure and you are hereby strictly directed and required if you shall not have carried Our Royal Instructions for that purpose given already, into effect; upon receipt hereof, by the first opportunity & without delay, to communicate to Our said Council, such and so many of Our said Instructions wherein their Advice and Consent are made requisite, with such others from time to time, as you shall judge for Our Service to be imparted to them.[1]

G. R.

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George R.

[L. S.]

Additional Instruction to Our Trusty and Welbeloved Frederick Haldimand Esquire, Our Captain General and Governor in Chief in and over Our Province of Quebec in America, or to the Commander in Chief of Our said Province for the Time being. Given at Our Court at S^t James's the Sixteenth day of July 1779. In the Nineteenth year of Our Reign.

Whereas it is expedient and agreeable to Our Royal Will and Pleasure that Our Subjects Inhabitants of Our Province of Quebec, under your Government, should have, and enjoy every Benefit and Security resulting to them from a speedy and effectual Distribution of Law and Justice, according to the principles of the British Constitution, as far as the same can be adapted to their peculiar Circumstances and Situation. And Whereas according to the practice of the Courts of Civil and Criminal

[1] This is one of the recommendations of the Board of Trade referred to in the previous note and which was rendered necessary on account of Carleton's having withheld his Instructions from the Council, contrary to the seventh article of the Instructions. See Q 18–B, p. 143, also p. 155. Haldimand, who had adopted Carleton's policy, naturally did not relish the Instructions received, and in a despatch to Germain of 14th Sept., 1779, marked "Secret and confidential," after referring to other matters, he takes up the question of the additional Instructions: "From the State of the Province herein Exhibited, your Lordship will please to consider, whether, consistently with the King's Service, the additional Instructions sent over this Spring ought positively to be attended to, and followed, whether every Measure of Government ought to be exposed, and laid open to that Mixture of People which compose our Council, and whether it is not more probable that the generality of its members will rather incline to the particular and concealed Interests, to which they lean, or which is more probable, be biased by what they conceive to be their private and particular Interests, than act upon Just and liberal motives for the Good of the State in general." Q 16–2, p. 591. See also Q 16–2, p. 616. He therefore withheld the two Instructions of March 29th and continued his previous course. When these facts, including Haldimand's explanations, were laid before the Board of Trade they passed the following judgment upon his conduct,—"Sensible as we are of your merit, and the purity of your intention, it is painful for us to proceed to the consideration of your not communicating to the legislative Council the General Instructions, which you were particularly directed to do by the additional Instruction transmitted to you for that express purpose; And, as far as appears to us, not complying with another additional instruction sent you therewith, for regulating and preventing an abuse introduced by your predecessor, of doing the business of Council by a select number of the Members, under the name of a Privy Council; yet not paying obedience to express Instructions, the compliance with which rested with yourself only, is a matter of too serious importance for us not to give you our unreserved opinion upon it. The instructions in question were founded upon the most convincing necessity, and His Majesty's Pleasure was conveyed in terms so peremptory and express, that we are at a loss to conceive, how it was possible for you to hesitate upon an instant obedience to them: had we only consulted our immediate line of duty, we should have submitted to His Majesty our opinion upon this conduct on your part; but as a proof of our good wishes for you, and that we place the utmost confidence in your assurances, that your views, as well in the civil as the military affairs of the Province, have no end, but his Majesty's Service; however we conceive you to have been in this instance mistaken, we have adopted this method to inform you what we think of this part of your conduct, as Civil Governor; and as we persuade ourselves, that you will immediately, upon the receipt of this letter, comply with the said instructions, we forbear to add what we must upon a contrary conduct of necessity do." Q 18–B, p. 182.

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Judicature, as constituted by the Ordinances now in force, the Official Duty of the Chief Justice of Our said Province is confined to Causes of a Criminal Nature only except in Cases of Appeal, where he sits in common with the rest of our Council. In Consideration hereof, and to prevent (as far as in Us lies) the Frequency of Appeals, It is Our Will and Pleasure and you are hereby strictly enjoined and required, by and with the Advice and Consent of Our Council in their Legislative Capacity assembled to frame an Ordinance to be passed for the purposes of explaining and amending the Ordinances before mentioned by directing and enacting that the Chief Justice shall preside and be made a Member of the Court of Common Pleas, and as such shall sit in the said Court four times in the year at Quebec, & twice in the year at Montreal, at the latter place immediately after, or before the present Circuit Business, as shall be deemed most convenient, that notwithstanding his having given his Opinion in the Court below he shall sit and give his Opinion in the Court of Appeal, that such Court of Appeal shall consist of four persons besides the Chief Justice to be nominated by the Governor or Commander in Chief for the time being from among the Members of Our Council, and approved and confirmed by Us, together with the Judges of the Court of that District from whence the Appeal does not come, the Lieutenant Governor of Our Province not to be one; That of these persons five to be a Quorum for the Dispatch of Business, the Chief Justice or the Person or one of the Persons officiating in that Capacity always to be one; And that the said Court of Appeal be confined to examine Errors of Law only taking the Facts, as stated in the Transcript transmitted by the Court where such Cause shall have been determined, & without going into New Evidence, or re-examining the Evidence before taken.[1]

G. R.

[1] A memorandum drawn up by Mr. Livius, without date but evidently while he was in Britain, proposed an amendment to the judicial system of the Province; "In order that impartial & Substantial Justice may be easily attained in Canada by a course of Law, three Points are principally to be attended to:" The three points are,—"First—to interpose such an Authority between the Sword & the People, that they may not be oppressed by any Person using the Generals name." &c. 2dly "To divide the supreme Judicial from the Legislative Authority which are now conjoined in precisely the same Persons, viz the Council:" &c. 3rd "To establish some Judicatory for small causes arising at a great distance from the Seat of the Ordinary Court in each district." These features, and especially the latter two, are discussed at some length, with detailed suggestions for bettering the system. See Q 16—1, p. 3. On May 6th the Lords of Trade sent an official communication to Richard Jackson, the Counsel of the Board, saying that it had under consideration "what Amendments it may be expedient to propose to His Majesty in the constitution of the Courts of Common Pleas within the Province of Quebec." Hence they "desire your "opinion for their Lordships information, 'whether it is not fitting and expedient for the better distribution 'of Justice in Matters of Property, that the Chief Justice, (whose function is at present confined to the 'cognizance of Criminal Causes only) should also preside in the Courts of Common Pleas established for 'the Districts, into which the Province is divided; and if so, at what and how many periods in the course 'of the year his presence should be required so as best to satisfy the convenience of parties resorting to his 'judgment, and least to interrupt and obstruct the other Duties of his office; also whether any objection 'lies against his sitting as a member of the Council upon Appeals from Courts, where he has presided in 'judgment upon the causes; and if so, what regulations you would recommend as to his interference in the 'Council upon such Appeals, whether by barring him from Vote, or even from Debate, unless called upon 'to give information in the same, likewise whether any regulation is advisable as to the persons composing 'the Council in cases of Appeal; and whether in such cases the Council, shall proceed to examine and 'correct all errors both of fact and Law, and admit new or further Evidence.'" Q 18—B, p. 157. On July 1st the Board of Trade reported to the King in Council on the system of justice in Quebec and the Ordinances passed there in 1777, "and we thereupon humbly beg leave to represent to your Majesty, that, however it might have appeared to your Majesty's Governor and Legislative Council, that these Ordinances would be adequate to the Salutary purposes for which they were framed, we find on the best information, that they are in many instances insufficient, and particularly for that the official duty of the Chief Justice is thereby confined to matters criminal and cases of Appeal; and that the frequency of Appeals from the Courts of Common Pleas, under their present Establishment, is attended with every manifest inconveniencies to your Majesty's Subjects." Q 18—B, p. 161. After this follows the substance of the Instruction here given. On Oct. 24th, 1779, Haldimand acknowledged the receipt of this Instruction and promised to lay it before the Council, though he doubts the wisdom of making any changes under the existing circumstances of the Province. He promises during the winter to give his views on such alterations as appear to him practicable. See Q 16—2, p. 621.

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OPINIONS OF MEMBERS OF COUNCIL ON EXECUTING THE INSTRUCTIONS OF 16TH JULY 1779.[1]

The Question now put is,
Whether it is expedient to put in Execution His Majesty's Additional Instruction to His Excellency the Governor dated in July last, requiring alterations to be made in the Courts of Appeals and Common Pleas.

Every Member of this honourable Board is, no doubt, well inclined to pay all due obedience to the King's Commands—The Alterations required by His Majesty, are Expressly said to be for the purpose of benefiting His Subjects in this Province, by an Expeditious Efficacious distribution of Justice, founded on the principles of the British Constitution.

I therefore Conclude, that the Ordinances of this Province for Establishing Courts of Civil Judicature, have been laid before the great Law Officers, and in consequence of their report and advice the Instruction now before us has been framed : For that reason it would be high presumption in me to suppose that the Alterations which His Majesty enjoins to be made would not be productive of the good Intended ; It is therefore my advice, that an Ordinance be passed, deviating as little as possible from the great outlines laid down in the Instruction, but to have its Operation suspended until His Majesty's further pleasure is known.

The Intention of this Suspension is to give time to the Members of this Board (who apprehend that the alterations required will hurt, rather than prove beneficial to the Subject) to state to the Minister thro' His Excellency the Governor the evils that may (in their opinion) probably result from a Change in the present mode of administering Justice. I would wish humbly to represent that I think the person appealing from the Sentence of the Court to a higher Court, where a Member of the Court appealed from sits as President, may Count on the President's Voice and Influence. I would likewise represent that there ought to be four terms annually at Montreal instead of two.

I am of opinion that this Board may guard against Every inconvenience in framing that Law, We may certainly make deviations of this Nature without incurring Censure as having acted contrary to His Majesty's Gracious Intention.

(Signed)

HUGH FINLAY

Quebec 14th February
1780.

Indorsed.

Copy

Mr Finlay's Opinion concerning the Additional Instruction which the Governor laid before the Legislative Council for their Advice concerning some Alterations Enjoin'd to be made in the Court of Civil Judicature.

14th February 1780.

In Govr Haldimand's (No. 67) of 25th Oct 1780.

[1] Canadian Archives, Q 17—1, p. 299. Hugh Finlay occupied the position of Postmaster General in Canada, an Imperial Appointment.

OPINION OF GEO. ALLSOPP.[1]

Mr Allsopp's Opinion is that it would be for the Advantage and benefit of the Province to advise the Governor.

That an Ordinance be framed and passed in Conformity to His Majesty's Royal *Additional Instruction* bearing date at St James's the 16th day of July 1779, with a Saving Clause to the following purport;

That neither the Chief Justice nor any other Judge of the Courts of Appeals or Common Pleas, shall have two Voices or a preponderating Voice in any of the said Courts, there appearing by this New Regulation to be Intended Eight Judges in the Court of Appeals and four in each of the Courts of Common Pleas; and therefore to remedy the Inconvenience of an Equal division of Voices, Let it be Enacted, That when the Voices shall be Equal in the Court of Common Pleas, The Eldest Member of the Council, not being one of the Judges of the said Courts, shall be added to the Judges so divided in Opinion, and the Cause reheard—And when it shall so happen that the Voices in the Court of Appeals shall be also Equally divided, That there be added to the Number of Judges in that Court, the Eldest Member of the Council, not being a Judge of either of the Courts of Common Pleas, nor having before sat on the Cause, and the Cause reheard.

(Signed) GEO: ALLSOPP.

Indorsed— Copy.

14th February 1780.

Mr Allsopp's Opinion upon the Question concerning His Majesty's Instruction, viz, additional Instructions of the 16th July 1779.

In Govr Haldimand's (No 67), of 25th Octr 1780.

OPINION OF GEO. POWNALL.[2]

Mr Pownall's Answer to Col! Caldwell's Motion relative to the King's Instructions.

In Council Quebec Feby 13th 1780. } With respect to the regulations proposed in His Majesty's Instruction being carried into immediate Execution, being to the Advantage and benefit of the Province, I think in the present unsettled & disturb'd Situation of the Province it would not.—

With regard to its being the means of administering more Speedy & Effectual Justice.—

In this point I confess myself both diffident & hardly able to form my Judgement, but I have so great respect and so high an Opinion of the wise & deliberate consideration under which these regulations have been formed, before recommended to this Council, and I am sensible of the want of some regulation in one of the Courts of Law of this Province, that I recommend as the best advice my Judgement is able to form; that the Consideration and formation of the Ordinance recommenended be put off 'till the next Year or some time of more tranquility & regularity.

(Signed)
GEO: POWNALL.

Indorsed. Copy

14th February 1780.

Mr Pownall's Answer To the Question put relative to the King's Instructions.

In Govr Haldimand's (No 67) of 25th Octr 1780.

[1] Canadian Archives, Q 17-1, p. 307. Geo. Allsopp was one of the original British settlers in the Province of Quebec, and took a prominent part in maintaining the rights claimed by that element, including the rights of the civil as against the military authority. In 1768 he was appointed by Carleton as Deputy Secretary, Registrar, and Clerk of the Council. When, in 1775, Mr. Geo. Pownall was appointed Secretary and Registrar, Allsopp lost his office, but was shortly afterwards appointed a member of the Legislative Council. In Haldimand's time he was a merchant of Quebec.

[2] Canadian Archives, Q 17-1, p. 309. Geo. Pownall came out with Chief Justice Hey in 1775, having been appointed by Dartmouth as Clerk and Registrar of the Legislative Council of Quebec.

Following Pownall's opinion came that of Wm. Grant of St. Roc, which was somewhat lengthy, but the substance of which was as follows :—He points out that by the Quebec Act the power of erecting courts

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OPINION OF LEGISLATIVE COUNCIL ON THE INSTRUCTION OF JULY, 1779.[1]

To His Excellency Frederick Haldimand Captain General and Governor in Chief, in and over the Province of Quebec &^{ca} &^{ca} &^{ca}

The Address of the Legislative Council in Council assembled.

The Legislative Council having taken into Consideration His Majesty's Royal Instruction of 16th of July 1779,[2] and being of opinion that the passing an Ordinance in Conformity thereto, would neither tend to the good of the People of this Province nor to a Speedier or more impartial Administration of Justice, begs leave to Communicate to Your Excellency the reasons upon which that Opinion is founded.

The present Ordinances Establishing Courts for the Administration of Justice,[3] were framed and prepared from, and are agreeable to His Majesty's 14th & 15th Instructions[4] to the Governor of this Province, as far as the Local Circumstances thereof would permit, and have been found to answer the good purposes for which they were Intended, Whereas the Change proposed of the same person presiding in the Court of Appeals and giving a Voice there in Causes which he had already decided in the inferior Court, would undoubtedly lessen that Confidence which the People ought to have in the impartial Administration of Justice, and which is so necessary to the Peace and Tranquility of Society—

It is likewise to be Observed that in the Quebec Bill all Causes relative to Civil Rights and property, instituted in the Courts of Justice in this Province, are to be determined agreeable to the Laws & Customs of Canada, of which Laws & Customs the Judges who at present preside in the Courts of Common Pleas for the Districts of Quebec and Montreal have had fifteen Years Experience & Study.

Upon the Establishment of Civil Government in the Year 1764, the Governor and Council adopted the Mode of terms[5] & for several Years that Mode was followed, when in the Year 1770 it was laid aside as having been found not adapted for this Province.[6] The People had been accustomed to Weekly Courts & in a small Country, such as this is, terms were too conspicuously made use of, for the purpose of procrastination & delay in the decision of Causes not to have given Dissatisfaction—

The having four Terms at Quebec and only two at Montreal, which is by far the most populous and most Commercial of the Districts, is an additional Objection to that Mode proposed by the Instruction.

For these Reasons and after the most Serious & deliberate Consideration of the Expediency of such Regulation being put in force, our respect and Attention to the Rights of the Crown & our Earnest wish for the Welfare of His Majesty's Government, of which Your Excellency, we hope, is sensible, oblige us to the necessity, tho' with the greatest respect to the high Authority, by whom the Measure has been recommended, to differ so far in Opinion.

and appointing judges is vested solely in His Majesty, and in the Instruction referred to, His Majesty appoints that an Ordinance be framed by the Council to amend the Ordinance now in force relative to the Courts of Civil and Criminal Jurisdiction. The Court appointed may not be ideally good, but it is better than the one now existing and more in accordance with the British Constitution. A court with judges who know the law is better than one with judges who have only common sense. He then specifies certain features which are not very good and gives it as his opinion that there should be four terms in the year for Montreal as well as for Quebec. See Q 17-1, p. 311.

[1] Canadian Archives, Q 17-1, p. 302. This expresses the opinion of the majority of the Council. The original form of this address cast a slur upon the Chief Justice, and, by implication, upon the Board of Trade, hence Haldimand referred it back for amendment. See Q 17-2, p. 393.

[2] See p. 477.

[3] See pp. 464—472.

[4] See p. 423.

[5] See Ordinance of 1764, p. 149.

[6] See Ordinance of 1770, p. 280.

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We have further to add that the Plan by which we have regulated our Conduct, as the Legislative Council, has been to pursue the Measures, which appeared to us the best Calculated to Secure the Province to His Majesty and to keep it dependent on Great Britain, We are Sensible that some Alterations may & ought to be made in the Laws and Customs of Canada, But we apprehend, that in the present Critical State of the British Empire in America, Innovations in the Province might be improper—And it is with regret we find Ourselves Obliged by our Duty to the King, to mention to Your Excellency the Bad Effects which the Reports, circulated Every Summer of Changes to be made in the Mode of administring the Affairs of the Province have upon his Service.

They disquiet the minds of the People and furnish plausible pretences to the Emissaries of the revolted Colonies and the other Enemies of the State, to insinuate that nothing is permanent under a British Government; and the Quebec Act, the result of the generous and tolerating Spirit, which distinguishes an Enlightened Age and Nation, was the Effect of an Interested Policy, and would be repealed, as soon as the Ends for which it was made were Effected.

H. T. CRAMAHÉ
P. L. C.

Council Chamber
7th March 1780.

Indorsed.

Address of the Legislative Council.
In Govr Haldimand's (No. 67)
of 25th Octr. 1780.

HALDIMAND TO GERMAIN.[1]

Lord Geo Germain — QUEBEC 25th October 1780.

MY LORD,

The Minutes of the Proceedings of the Legislative Council with the Ordinances[2] which have been passed and to which my assent has been given, are transmitted in the Danae Frigate, no safe opportunity having presented itself during the course of the Summer—This letter will necessarily be a long one, I have now been upwards of Two Years in the Province and in some respect qualified to give your Lordship an account of the real state of Persons and things. It may be the means of rendering my correspondence with regard to the Civil Affairs of the Province less Prolix for the future.

I have frequently been much embarrased and upon many occasions have been intirely prevented from carrying into execution measures which I have considered as necessary for the safety and Defence of this Province and its Frontiers from the exhausted state of the King's Magazines with regard to Provisions and from the Difficulty as well as enormous Expence of supplying the Defficiency in the Province.

It was therefore with Indignation & Regret that in March 1779, in consequence of an express from Halifax to Messrs Drummond and Jordan, I saw a successful attempt on their part and that of several Merchants or Traders to engross the Wheat and enhance the Price of Flour.—At that time there was not the least shadow of scarcity, but in less than a Fortnight the Price of Wheat was raised from 4 shillgs or 4/6 per Bushel to 6/ and upwards. I lost no time with the advice of a Quorum of His Majestys

[1] Canadian Archives, B. 54, p. 354. Given also in Q 17-1, p. 270. This letter gives Haldimand's report on the proceedings of Council from Jan. 27th to April 12th, 1780. Two subjects engrossed virtually the whole attention of the Council: First, the communication of the Governor's Instructions and the expediency of acting on that of July 16th 1779; Second, the question as to the constitutional power of the Council to prohibit the export of grain, flour, and other food stuffs, or to fix an arbitrary price for them. Naturally Haldimand reviews these questions and the discussion of them in Council, from his own point of view.

[2] For the Minutes of Council, Jan. 27 to April 12, see Q 17-1, pp. 329—383. & Q 17-2 pp. 384—458. The ordinances passed at this session are given in Q 17-2, pp. 459—657.

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Council to forbid the exportation of Provisions, and to issue a Proclamation against ingrossing, forestalling and regratting:[1] The evil was not remedied, but the Price of Wheat was by various Artifices, assisted by a Bad crop in the District of Quebec, tho' that in Montreal District was tollerable, raised early in the Winter to Ten shillings per Bushell.

It could not escape my observation that the Merchants des Côtes, who went up and down the Country, & who by purchasing small quantities of Wheat at a very high Price, engaged the Inhabitants on the River Chambly & Sorrel to keep up the remainder of their Wheat in hopes of a still greater Price, were under the influence and supported by the credit of such Merchants as were most disaffected to Government. Perhaps it is not going too far to suspect in some, worse motives than the love of gain, for a conduct, which rendered every Farmer's House in the Parishes of that part of the Country, where an Invasion if attempted during the Winter, must take place, a Magazine of Provisions for an Enemy, who from the difficulty of Transport and other local circumstances could not bring any with them.—

The Magistrate of Quebec & Montreal had found it very difficult to oblige the Bakers to continue the exercise of their Trade,[2] and still more so to procure Flour for the daily and immediate consumption of the Towns. The Poor suffered much and all Ranks of People looked up to the meeting of the Legislative Council as the time when something effectual would be done for the relief of the Poor, and to put a stop to a spirit of ingrossing which had perverted the Province. Therefore I ordered the Legislative Council to assemble on the 27th of January and recommended the high Price of Wheat & Flour (the first being at that time at ten Shillings per Bushel, the other at 40/. per 100 lbs for the worst of Flour) to their serious consideration.[3]

A Committee consisting of Messrs Finlay, Dunn, Cuthbert Harrison, Alsop, St Luc, Gugy, Grant & Baby were appointed to consider and propose ways and means to reduce the high Price of Wheat & Flour. Their Report was that an Ordinance should be made to prevent the exportation of Provisions for a limited time, and that an address should be presented to me, requesting a Renewal of the Proclamation against ingrossing &c.—

This did not appear sufficient to many members of the Council, who considered that tho' the exportation had been prevented last summer, and that tho' the Proclamation, of which the Renewal was requested, had been published early in the Summer—The Price of Wheat and Flour had been gradually raised to an exhorbitant highth, not from any real scarcity, but from the avarice of Ingrossers. It was therefore proposed that an Ordinance should be passed or a clause added to that for non exportation, fixing or rating for a limited time or untill the new Crop could be got in, the Price of Wheat and Flour. This was the more necessary as otherwise there would be a risk of great part of the Lands in the District of Quebec remaining unsown, as the Inhabitants could not afford to give 10/- per Bushel for Seed Wheat.

This gave occasion to much altercation and great variety of Argument, the Attorney General[4] was applied to for his opinion as some Members contended that the Legislative Council had under the Quebec Bill no authority to levy Taxes or impose Duties, and that fixing the Price of Wheat And Flour was Synonimous to imposing Taxes or Duties: His opinion coincided with theirs, but as it was couched in a mysterious manner as if it had been founded more upon the words in which the Question was stated than the merit of it, It was Proposed to have the sense of the Legislative Council with regard to the Legality of the measure, as if the Legislature had not the authority it was in vain to

[1] On Nov. 7th, 1778, six of the Council were called together, and recommended the Governor to issue a proclamation prohibiting any one from exporting wheat, flour, or biscuit, without a license from the Governor, until Dec. 1st, and after that a total prohibition of export until Aug. 1st, 1779. This was approved by the Governor and the proclamation issued. See Q 16-2, p. 674; also B 78, p. 16. As this did not lower prices, the bakers were next dealt with, and a further proclamation, being the one here referred to, was issued. See also B 78, pp. 25 & 31.

[2] See B 78, p. 23.

[3] See Q 17-1, p. 331.

[4] James Monk was appointed Attorney General in 1776, to succeed Henry Kneller who had died.

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reason on the Expediency of the measure this Proposal so necessary to the Discussion of the Measure in question and seemingly so essential to the Authority of Government, was overruled by one Voice. It was then Proposed whether the price of Wheat and Flour should be fixed by Ordinance for a limited time, and it was resolved by a Majority of one voice in the negative—Messrs Cramacké, Finly, Dunn, Cuthbert, L'Eveque, Collins, Pownall Alsop, De Lery, Harrison & Grant being against fixing the price—Messrs Mabane, St. Luc, Bellestre, Gugy, Fraser, Caldwell, St. Ours Longueil, Baby and Holland being for it. Not willing to disturb the Proceedings of the Legislative Council, the Gentlemen who wished to fix the price, did not immediately signify any desire to file their reasons of Dissent, but at a subsequent meeting when only Three of them were present, they Proposed to have their reasons of Dissent incerted in the minutes, as it would be the certain means of having the opinion of the proper Law Officers in England on the Legality of the measure, as it was of much Consequence to the good of the Province that the question should not be left in Any respect doubtful. This Proposal tho' reasonable in itself was refused under pretence of Form, tho' as yet there is no kind of Form established by the Legislative Council for its proceedings. The Paper was filed in the Council Office, it is here annexed as well as the opinion of Mr Williams, the only Lawyer of any note, except the Attorney General, and I beg that Your Lordship will lay the reasons of Dissent, the Attorney General's and Mr. William's opinions before the proper Law Officers.[1]

However diffident I might be of my own opinion with regard to the Legality, I could entertain no doubt of the expediency of the measure. It was the only one that could without delay reduce the high Price of Provisions and check the Spirit of speculating in the necessaries of Life, which is equally prejudicial to the Welfare of the People as to the service of the Prince. Notwithstanding the other measures which the Legislature adopted and which I will Afterwards mention, the exhorbitant price of Wheat and Flour continued the same, or rather increased, till the certain prospect of a new & plentiful crop lowered it a little about the latter end of August, but not till after I had been under the necessity to order the Commissary General to purchase Flour at a high rate from the Ingrossers, who thus in spite of all my efforts have profited by the Public Distress

When it is considered that Great Britain is engaged in an expensive War, and which is carried on at 3000 miles distance by which the supplies of Provisions &c. are exposed to the Danger of the sea and Powerful enemies, it becomes the Duty of every good Citizen to do every thing in his Power to Diminish the Price of Provisions, as by that means Government may be enabled to establish and fill Magazines so as to obviate the Bad Consequences which might arise from the Provision Fleet from Europe for New York, & the Northern Parts of America falling into the Hands of the Enemy, or an Enemy's Fleet being the first in the River St. Lawrence. This Country is in peculiar Circumstances; whilst the Rebellion continues in the neighbouring Colonies, little or no Resources can be had from Importation, which is the natural means to Reduce the Price of any Commodity, besides, the Climate absolutely prevents it for seven months of the Year, hence occurs the great necessity of Government taking precautions to Secure Bread for the People, as well as for the Army: Humanity, as well as Policy justifies the measures— a few Interested Traders would have been dissatisfied and would have endeavored to have made a Clamor against it in London, but in Canada it would, instead of a Revolt which some People affected to fear, have given general Satisfaction to the Canadians who looked for it and Stood in need of it, & would have given them a Confidence in that Government, whereas there are not wanting people to insinuate to them that they could not rationally expect Redress from a Council, one half of which at least was Composed of Dealers in Wheat & Meal Mongers.—[2]

[1] The reasons for dissent given by A. Mabane, F. Baby, and Saml. Holland will be found in Q 17-1, p. 324; the opinion of Attorney General Monk in Q 17-1, p. 318; and that of Jenkin Williams in Q 17-1, p. 315.

[2] That Haldimand's suspicion of the grain merchants was really unfounded, and that he was virtually holding them responsible for an unusual dearth of food products in the face of an unusually large consumption, was afterwards abundantly proved even from his own despatches. The grain merchants were ultimately prohibited from either buying or selling grain, yet the price was not lowered; the bakers

The Legislative Council, having resolved not to fix the Price of Wheat and Flour by Ordinance, were pretty unanimous in preparing & passing one to prevent the exportation of Provisions for two years, tho' there is nothing repugnant to the Laws of Trade in the Ordinance,—Yet not to interfere with the Custom-house, the Legislative Council required the Naval Officer to take the Bonds &ca tho' that Business could have been done with more ease to the Merchants at the Custom-House. The Ordinance received my Assent & I hope will next Year be productive of good Consequences in keeping low the Price of Provisions, as I will on my part be Careful that the Respective Officers be diligent in putting it in Force.—[1]

As many of the Members who were averse to fixing the Price of Wheat and Flour, had declared their Readiness to Concur in passing an Ordinance against Ingrossing, Forestalling & regratting in place of the Address to me for the Renewal of the Proclamation, the Heads of an Ordinance were prepared accordingly. In consequence of the successful attempt to engross the Wheat in the Spring 1779, which I have already mentioned to Your Lordship, I had Consulted the Attorney General & Received his opinion in writing that the Statute of Edward the sixth against Ingrossers Forestallers & Regrattors was in force within this Province. In Conformity with that Opinion and with the advice of a Quorum of the Council I issued a Proclamation declaratory of that Law, & of the Method of convicting Offenders by the Justice of the Peace in their Quarter-Sessions without the Intervention of a Jury which in this Case was the most advisable mode of Prosecution, as the Old Subjects who give the Ton on Juries are Traders and few of them have any Objection or Scruple to get Money whether by Ingrossing, Forestalling or Regratting

The Legislative Council made the Same Statute the Basis of the Ordinance & extended the Offence of Ingrossing and Forestalling to the Proprietors of milk & Manufacturers of Flour, As otherwise a Combination of Five or Six of these Men by buying up a Large Quantity of Wheat, would have been Sufficient to Raise the Price of Flour to whatever Sum they pleased. This gave great Umbrage to Messrs Cuthbert, L'Eveque, Alsop & Grant, who all have or propose to have great dealings in Wheat and Flour. The Majority however felt the necessity of something being done, The Ordinance was passed and Received my Assent. It was printed & ready to be published, when fortunately it was discovered by Mr. Powell, an Attorney at Montreal, who was employed to deffend an Ingrosser against whom a Prosecution had been Commenced, that the Statute of Edward the VIth had been Repealed.

The Legislative Council had agreable to that Statute inflicted the Penalty of the Pillory (which, as Carreying Infamy with it would have had great Effect in deterring Canadians) upon Persons Convicted of the third Offence. The Quebec Act restrains the Legislature of this Province from Carrying into Execution without His Majestys Previous Approbation, any Ordinance inflicting Severer Penalties than Fine or three Months Imprisonement—I was therefore under the necessity to re-assemble the Council, to alter that Clause of the Ordinance, as likewise the Title of it[2]—I cannot Suppose that the Attorney General concealed from me or the Legislative Council any knowledge he may have had of that Statute being repealed, at the same time I must acknowledge to you My Lord that there have been many things in that Gentleman's Conduct, which Tend to destroy that Confidence which I should have in the Person who fills that Employment.

I had in my Speech to the Council[3] recommended to their consideration the Fees which were taken by the Officers of Government & mentioned those taken by the Lawyers as particularly Complained of—

were then regulated, but without increasing supplies; finally, it was resolved to compel the farmers, with the aid of search warrants, to bring out their supposed hoards, still nothing of consequence could be extracted from them until the following harvest.

[1] This Ordinance was entitled, "An Ordinance To prohibit, for a limited time, the exportation of wheat, pease, oats, biscuit, flour or meal of any kind; also of horned cattle; and thereby to reduce the present high price of wheat and flour."

[2] The Ordinance as passed was entitled, "An Ordinance Describing the persons who shall be deemed Forestallers, Regrators and Ingrossers in this Province, and inflicting punishment upon those who shall be found guilty of such offences."

[3] See Q 17-1, p. 331.

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Law-Suits in general are more owing to the Inhability than want of Inclination in people to pay their Debts, hence the Rapacity of the Lawyers was the more Conspicuous, as falling heavy upon the Poorer sort of People tho' there was but too much Cause of Complaint in the other Departments.

Governor Murray had in the Year 1765 published an Order of Council wherein he regulated the Fees of the Officers of Government and of the Lawyers at a Reasonable Rate, but after his Departure little Regard was paid to that Order except in the Courts of Common Pleas, & its Authority ceased entirely in May 1775.

Sir Guy Carleton had in the Sessions 1775 proposed to Regulate the Fees of Office & had that Business very much at heart. Committees were appointed for that Salutary purposes & tho' many Obstacles were thrown in the Way, great Progress was made. The Ordinance was lost for, that time by Sir Guy Carleton's putting an End to the Session in Consequence of Motions made in Council by Mr. Livius & others.

The Business was in itself complicated & difficult, but it became more So from the Circumstance of many of the Officers of Government, whose Fees were to be Regulated, being Members of the Legislative Council. The Committee had many Obstacles to Surmount & particularly from the D. Surrogate of the Admiralty and the Attorney General. The D. Surrogate inserted that the Court of Admiralty in England had alone the Right to Regulate the Fees of the Vice Admiralty Court, where Parliament had not already done it,—This Matter was at last made easy by a Letter being produced to the Committee from the Secretary of the Treasury to Mr. Cramahé at that time Commanding the Province, acquainting him that the King had allowed the Judge of the Vice Admiralty Court at Quebec a Salary of £200 per Annum in lieu of all Fees.—

The Attorney General claimed the Fees taken in the Leeward Islands in Consequence of words incerted in Mr. Suckling's Mandamus (tho' that Attorney General's Fees are regulated in Gov^r Murray's Order of Council in the Year 1775) and implied in Mr. Monk's Mandamus, which intitled him to all Fees taken by his Predecessors—.He was Supported in his Claim by Mess^rs Finlay, Cuthbert, Alsop & Grant, who however willing they may be to Circumscribe the King's Authority in measures of General Utility to his Service & the Welfare of his People, are for carrying on to the greatest heighth his Prerogative to grant Letters Patent for the Emolument of Individuals tho' to the Oppression of the People—The Ordinance was Passed & received My Assent.[1] The Fees in general are by far too high, and more than the People of this Province can bear.—The Price of Provisions and other necessaries of Life have risen So much within these few Years that a greater Reduction of the Fees could not well have taken place at present. The Ordinance is to be in force for two Years. at the expiration of that time It is to be hoped that the Legislature will be enabled from Experience to make a more perfect List of Fees, more permanent & less burthensome to the People for the Officers of this Province, than the present one ag^t which they nevertheless exclaim

There was an Ordinance passed & assented to, relative to the Maitres des Postes,[2] many Members were averse to the Legislative Councils interferring in that Business for the present as they wished during the Continuance of the War at least that it was annexed to the Quarter Master Generals Department, or to that of the Inspectors of the Corvées.—They Coincided nevertheless with the other Members who perhaps pushed it more with a view to the Benefit of an Individual than to any Advantage which might Accrue to the Public, Care however was taken that I, as Governor of the Province should have the Intire Authority in appointing Such Inspectors & giving them Such Instructions as I pleased. This Business is of more Consequence to the Safety of the Province than would at first Sight Appear, but it remains with me to put it into the Hands of Such Officer of Government as I can Confide on, & it is at present under the direction of Mr. Finlay, who has Talents & Experience in that Department.—[3]

1 The Ordinance is entitled, "An Ordinance For the regulation and establishment of Fees."

2 This Ordinance is entitled, "An Ordinance For regulating all such persons as keep horses and carriages to let and hire, for the accommodation of travellers, commonly called and known by the name of *Maitres de Poste.*" This was the fourth and last ordinance passed at this session of the Council. They will be found in full in Q 17-2, pp. 459-657.

3 Mr. Finlay was Post Master General. This was an Imperial appointment, and for many years postal matters remained under the direct control of the British authorities.

In my Speech to the Legislative Council[1] I mentioned the Additional Instruction of the 16th of July 1779, which the Lieut Govr by my order communicated on the 28th of January with the Letter from Your Lordship accompanying it. I will give Your Lordship an Account of the Transactions which it gave rise to, without having regard to Dates in the minutes of Council in the Same Manner as I have done that of the Wheat Business.

Mr. Alsop moved that the L. Council Should previously address me to Communicate any other Instructions which I may have Received relative to passing Laws &c.—He had in Conjunction with Mr. Livius & others observed the Same Conduct the Second Sessions of the Legislative Council, and which contributed to Embroil the Council with my Predecessor.[2] The Motion was considered as indecent & rejected by a Great Majority of the Council, many of Whom knew that Mr. Livius & others had a Copy of Sir Guy Carleton's Instructions in their hands at the same time they were teizing him with motions in Council to Communicate them. The Lt. Govr nevertheless Acquainted the L. Council at their next meeting that I had two more Instructions, which I did not think proper to communicate for Reasons, which I would give to the King.[3] Sone Members wishing that a Distant Day Should be appointed for taking the Instruction into Consideration, It was Resolved accordingly, and in the mean time the Instruction was ordered to lie on the Table for the Consideration of the Members.

On the Day Appointed for that Business Mr. Caldwell moved that the Question Should be put; whither passing an Ordinance agreable to the Instruction of the 16th July[4] would either contribute to the Good of the People, or to the speedy & impartial Administration of Justice? A great Majority was of Opinion that it would not.

It was with Equal Regret that the L. Council found themselves under a Necessity to withhold their Assent to a Royal Instruction and which had been proposed by the Governor of the Province in Order to be Carried into Execution. It was therefore resolved on motion of Mr. Mabane that an Address Should be presented to me containing the Reasons.

The other Business of the Sessions prevented the Address from being presented till the 7th of March.[5] Tho' I was convinced of the Strength and Truth of the Reasons which were contained in it. I disapproved of the Manner in which some of them were expressed and therefore remanded it to be re-considered by the Legislative Council[6]—: However irregular Some of them might think this proceeding, the Majority did not hesitate to alter the Expressions which had given me Offence. Mr. Caldwell further Moved that the Original Address should be expunged from the Minutes.—This was Strongly & very inconsistently opposed by Messrs Finlay, Alsop & Grant, who, tho' they had voted against it, yet as it was capable of giving me Offence or of indisposing the King's Minister against the Majority wished Ardently that it should remain on the Minutes. In this the Majority acquiesced. Thus the Original Address is preserved in the Minutes.[7] I inclose you

[1] See Q 17-1, p. 332.

[2] See note 3, p. 476.

[3] See note p. 477. In a letter from Germain to Haldimand April 12th, 1781, referring to his conduct in these matters he says:—"I have had much Satisfaction in the View your Dispatches have given me of the Military State of the Province, and in expressing in my former Dispatch His Majesty's Approbation of your Conduct in your Capacity of Commander in Chief. It is therefore a great concern to me that any part of your Proceedings, as Civil Governor, does not appear in the same favorable light, or merit the like approbation.

"The King commanded me to transmit to the Board of Trade the Ordinances passed by the Legislative Council and the whole of your Dispatch No 67. and you will receive from their Lordships the Observations which the Consideration of those Papers have given occasion to, and as their Lordships have communicated them to me, and they entirely correspond with my own Sentiments, it is unnecessary for me to enlarge upon the Subject, as I should only repeat what their Lordships have said: it is however fit you should further be informed, that your withholding from the Council the Instructions which you were originally commanded by the King to communicate to them, and that Command repeated by an Additional and Special Instruction from His Majesty, is considered by His Majesty, as well as the Lords of Trade and myself, as such an Instance of disobedience to the Royal Authority as ought not to be passed over, if longer persisted in." Q. 18, p. 37.

[4] See p. 477.

[5] See p. 481 and note 1, p. 481.

[6] See Q 17-2, p. 398.

[7] See Q 17-2, p. 393.

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that, which was presented to me, with an authenticated List of the Causes which had been decided in the Court of Appeals. I likewise inclose the opinion or advice which Messrs Finlay, Alsop, Pownall & Grant gave me on the Occasion,[1] all of them are Sensible either of the Impropriety or Impracticability of Carrying the Instruction into Execution, & yet they are dissatisfied with the Legislative Council for not having passed an Ordinance in Conformity to it.[2] Such Conduct needs no Comment, Party Spirit is the Enemy of every Private, as well as Public Virtue, since my Arrival in the Province I have Stiered Clear of all Parties and have taken great Care not to enter into the Resentments of my Predecessor or his Friends, but this present Occasion obliges me to Declare to Your Lordship that in general Mr. Livius's conduct has not impressed people with a favorable Idea of his Moderation, At the same time My Lord that I do not in the least call in Question the Propriety of the Decision which has been made by the highest & most respectable Authority.

As it is my Duty, it has been my Business to inform myself of the State of the Country & I coincide with the Majority of the Legislative Council in Considering the Canadians as the People of the Country, and think that in making Laws and Regulations for the Administration of these Laws, Regard is to be paid to the Sentiments and Manner of thinking of 60,000 rather than of 2,000—three fourths of whom are Traders & Cannot with propriety be Considered as Residents of the Province.—In this point of view the Quebec act, was both just and Politic, tho' unfortunately for the British Empire, it was enacted Ten Years too late—It Requires but Little Penetration to Discover that had the System of Government Sollicited by the Old Subjects been adopted in Canada, this Colony would in 1775 have become one of the United States of America Whoever Considers the Number of Old Subjects who in that Year corresponded with and Joined the Rebels, of those who abandoned the defence of Quebec in virtue of Sir Guy Carleton's Proclamation[3] in the fall of the same Year, & of the many others who are now the avowed well wishers of the Revolted Colonies, must feel this Truth however national or Religious Prejudices will not allow him to declare it.

On the other hand the Quebec Act alone has prevented or Can in any Degree prevent the Emissaries of France and the Rebellious Colonies from Succeeding in their Efforts to withdraw the Canadian Clergy & Noblesse from their Allegiance to the Crown of Great Britain.[4] For this Reason amongst many others, this is not the time for Innovations and it Cannot be Sufficiently inculcated on the part of Government that the Quebec Act is a Sacred Charter, granted by the King in Parliament to the Canadians as a Security for their Religion, Laws and Property.

These being My Sentiments, Your Lordship will Conceive Some of the Reasons, which prevented me from Communicating the 12th 13th & 16th Instructions[5] to the Legislative Council. I have now been upwards of Two Years in the Country, have Conversed fully with all kinds of Men and have not found that the People were dis-satisfied with the Ordinances, which Regulates the Proceedings in the Courts of Justice; on the Contrary, all are Sensible that Debts are easier Recovered and with less Procrastination than formerly. The English Law of Evidence having been adopted in Lieu of that of the French Law in Commercial matters[6] has been found by Experience adequate to Securing the Interests & Property of the Merchant—The Clamor about the Trial by Juries in Civil Causes is Calculated for the Meridian of London ; in Canada, Moderate & upright Men are Convinced of the abuses

[1] See p. 479.

[2] For Allsopp's protest, which was entered upon the Minutes of the Council, see Q 17-2, p. 403. The wording of this protest caused much bitterness in the Council and ultimately caused Allsopp's suspension from the Council in Feb. 1783.

[3] Referring to Carleton's Proclamation of Nov. 22nd, 1775, ordering all those who refused to take up arms in defence of Quebec to leave it within four days. See Q 12, p. 24.

[4] Yet he sent several despatches to prove that they were quite ready to withdraw. See for instance, Q. 17-1, p. 195, and Q. 19, p. 268.

[5] Referring to the introduction, as far as possible, of the English Laws, the granting of the writ of Habeas Corpus, and the holding of government appointments at pleasure only. See pp. 422, 423 and 424.

[6] Referring to sec. 7 of the "Ordinance to regulate the Proceedings in the Courts of Civil Judicature in the Province of Quebec." See p. 467.

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to which that Institution is liable in a Small Community where the Jurors must be all Traders, and very frequently either directly or indirectly connected with the Parties— In the Civil Courts of Original Jurisdiction, the Evidence is taken down in writing, So that not only the Judges in Appeal, but the Whole World can Judge of the Fact upon which the Judges form their Decision. Be Assured My Lord that however good the Institution of Juries may be found in England, the People of this Country have a great Aversion to them ; they Cannot Reconcile themselves to have their Property determined by Men of that Station of Life of which Juries must be Composed, the Idea of Twelve Men being necessaryly of one Opinion before a Judgement Can be Obtained, revolts their understanding. An Innovation of that kind would have Many Inconveniencies.—There are Many Foreign Troops in the Province and there are not wanting ill disposed persons who would Stir up vexatious Lawsuits against them in Damages for imaginary Injuries if there was a Mode of Trial that Could Submit a German Baron to a Decision of Twelve Tavern keepers or Traders and that with the Sole View of Disgusting him with Our Service

It was with great Regret that I found MySelf Obliged not to Communicate the Instruction relative to the Security of Personal Liberty.[1]—The Citizens in no Country ought to be liable to Long Imprisonments, Persons accused of Crimes ought Certainly to be brought in a Limited Time to Trial, but in Time of War and Rebellion, it would be impolitic and in the present circumstances of the Province, highly dangerous to attempt an Innovation of the Kind.—I have been under the disagreable Necessity of imprisoning Several Persons[2] for corresponding with Rebels or assisting them to Escape and have great Reason to Suspect Many More of being Guilty of the Same practices, but have made it a Rule to pretend Ignorance as often as I can, and am Satisfied with guarding against Bad Consequences of their Treachery except where their crime is publickly known, and then I think it my Duty to take Notice of them, as a Contrary Conduct would betray weakness & encourage Others to follow their Example.—This was the Case with Mr. Charles Hay of Quebec & Mr. Cazeau of Montreal. The Clerk of the former was detected & apprehended last March as he was Setting off for Albany.— He had a Certificate from Charles Hay whose Brother is a Quarter Master General in the Rebel Army, desiring credit to be put in him.—The Clerk has confessed before a Magistrate that his Master Sent him and that Mr. Cazeau procured him a Guide.— The first applied by Petition to the Court of King's Bench at the last Sessions last May for the District of Quebec praying a Writ of Habeas Corpus. The Petition was rejected by the Unanimous Opinion of the Commissioners for executing the Office of Chief Justice,[3] who by that means and a Public Declaration which they made in 1779 at the Trial of Mr. Stiles of the Viper on an Indictment for Murder, of the King's having a legal Right to Impress Mariners of the Navy in time of War, have very much Strengthened the hands of Government.—The Province is Surrounded by Enemies from without and as happens in all Civil Wars is infested with Spies & Secret Enemies from within—Your Lordship Must be Sensible how necessary it is that Government Should be Supported. I confide in Your Lordships Zeal for the King's Service, to give me every Assistance in Your Power, and in Your Candor and Regard for Myself to assure His Majesty that My views in the Civil and Military Affairs of the Province, Shall and Can have no End but the Advantage of his Service and the Good of his People.—I Cannot finish this long Letter without requesting Your Lordship to be Convinced, that whatever System I may adopt, and whatever Opinion I may have formed of Men and things, is and will be the Result of my own Reflections and of my attention to my Duty, and not the Suggestion of Persons Influenced by attachment to former Systems or Plans

[1] The 13th article of the Instructions referring to the writ of Habeas Corpus. See p. 423.

[2] Referring to the ultimate outcome of a number of these imprisonments, we find the following statement, "Several actions for damages for false imprisonment, were instituted against him in England ; the persons who had been imprisoned recovered judgments against him, which were paid by Government." History of Canada ; from its First Discovery to the Year 1791. By William Smith. Quebec : 1815. Vol. II, p. 165.

[3] When Carleton dismissed Peter Livius from the position of Chief Justice, he re-appointed Messrs. Mabane, Dunn, and Williams a Special Commission to execute the office of Chief Justice, as had been done during the absence of Hey. See B 37, p. 196 ; also note 3, p. 476.

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of their own, at the Same time that I Cannot alter or Reject former Measures which I think for the Good of the King's Service, agreable to the wishes & Suitable to the wants of the People over whom I preside, because they May be agreable to Men, who perhaps have had private Views and Resentments.

I have the Honor to be with the greatest Respect and Esteem My Lord
Your Lordships Most Obedient
& Most humble Servant

(Signed) FRED HALDIMAND.

(Copy) ORDINANCE *RE* PROCEEDINGS OF COURTS.[1]

Anno Vicesimo Tertio Georgii III. Regis.

CHAP. I.

An Ordinance for further continuing an Ordinance made the 25th Day of February, in the seventeenth year of His Majesty's Reign, intituled, "An Ordin-"ance to regulate the Proceedings of the Courts of Civil Judicature in the "Province of Quebec." and in Amendment thereof.

Be it Enacted and Ordained by His Excellency the Governor, by and with the Advice and Consent of the Legislative Council of the Province of Quebec, and by the Authority of the same it is hereby Enacted, That an Ordinance made in the Seventeenth year of His Majesty's Reign, intituled. "An Ordinance to regulate the Pro-"ceedings of the Courts of Civil Judicature in the Provinceof Quebec" and every Article and Clause therein contained, shall be and continue, and the same is hereby further continued, from the passing of this present Ordinance unto the Thirtieth Day of April One thousand seven hundred and Eighty five.

And whereas in and by the Eighth Article of the said Ordinance it is Ordained and Enacted, That a Writ of Appeal shall be allowed if the Appellant hath given the requisite Security for prosecuting the same; It is Enacted and Ordained, That the Judges to whom any such Writ of Appeal may be directed shall and may be empowered, and are hereby lawfully authorized to Accept of Personal Security on Bail by Justification, for sufficiently prosecuting all or any such Writ of Appeal to be sued out and prosecuted according to the said Ordinance, any Thing contained in the Ordinances or Laws of this Province to the contrary notwithstanding.

(signed)

FRED: HALDIMAND

Ordained and Enacted by the Authority aforesaid, and passed in Council under the Public Seal of the Province at the Council Chamber, in the Castle of St Lewis, in the City of Quebec, the Fifth day of February, in the Twenty Third year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith and so forth, and in the Year of Our Lord One thousand, Seven hundred and Eighty three.

By His Excellency's Command.

J: WILLIAMS
C. L. C.

Canadian Archives, Q 62 A—2, p. 599.

[1] This Ordinance as passed in 1777 (see p. 466) had been renewed without amendment in 1779 and 1781, and is again renewed with a slight amendment.

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TREATY OF PARIS, 1783.[1]

DEFINITIVE TREATY of Peace and Friendship between His Britannic Majesty and the United States of America.—Signed at Paris, the 3rd of September, 1783.

In the Name of the Most Holy and Undivided Trinity.

It having pleased the Divine Providence to dispose the hearts of the Most Serene and Most Potent Prince, George the Third, by the grace of God, King of Great Britain, France and Ireland, Defender of the Faith, Duke of Brunswick and Lunenburg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &c., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory intercourse between the 2 Countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual Peace and Harmony; and having for this desirable end already laid the foundation of Peace and reconciliation, by the Provisional Articles signed at Paris, on the 30th of November, 1782, by the Commissioners empowered on each part; which Articles were agreed to be inserted in, and to constitute, the Treaty of Peace proposed to be concluded between the Crown of Great Britain and the said United States, but which Treaty was not to be concluded until terms of Peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such Treaty accordingly; and the Treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full effect the Provisional Articles above-mentioned, according to the tenor thereof, have constituted and appointed, that is to say:

His Britannic Majesty, on his part, David Hartley, Esq., Member of the Parliament of Great Britain; and the said United States, on their part, John Adams, Esq., late a Commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachusetts, and Chief Justice of the said State, and Minister Plenipotentiary of the said United States to Their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, Esq., late Delegate in Congress from the State of Pennsylvania, President of the Convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay, Esq., late President of Congress and Chief Justice of the State of New York, and Minister Plenipotentiary from the said United States at the Court of Madrid; to be the Plenipotentiaries for the concluding and signing the present Definitive Treaty: who, after having reciprocally communicated their respective Full Powers, have agreed upon and confirmed the following Articles:

Art. I. His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be Free, Sovereign and Independent States; that he treats with them as such; and for himself, his Heirs and Successors, relinquishes all claims to the government, propriety and territorial rights of the same, and every part thereof.

II. And that all disputes which might arise in future on the subject of the Boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are and shall be their Boundaries, viz., from the North-west Angle of Nova Scotia, viz., that Angle which is formed by a line drawn due North, from the source of St. Croix River to the Highlands, along the said Highlands which divide those Rivers that empty themselves into the River St. Lawrence from those which fall into the Atlantic Ocean, to the North-westernmost head of Connecticut River; thence down along the middle of that River to the 45th degree of North latitude; from thence by

[1] The text of the treaty is taken from "British and Foreign State Papers. Compiled by the Librarian and Keeper of the Papers, Foreign Office. London: 1841." Vol. I. Part I. p. 779.

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a line due West on said latitude until it strikes the River Iroquois or Cataraquy;[1] thence along the middle of the said River into Lake Ontario; through the middle of said Lake until it strikes the communication by water between that Lake and Lake Erie; thence along the middle of said communication into Lake Erie; through the middle of said Lake until it arrives at the water-communication between that Lake and Lake Huron; thence along the middle of said water-communication into the Lake Huron; thence through the middle of said Lake to the water-communication between that Lake and Lake Superior; thence through Lake Superior, Northward of the Isles Royal and Phelipeaux, to the Long Lake[2]; thence through the middle of said Long Lake, and the water-communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said Lake to the most North-western point thereof, and from thence on a due West course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the Norther-most part of the 31st degree of North latitude: South by a line to be drawn due East from the determination of the line last mentioned, in the latitude of 31 degrees North of the Equator, to the middle of the River Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River, and thence down along the middle of St. Mary's River to the Atlantic Ocean: East by a line to be drawn along the middle of the River St. Croix, from its mouth in the Bay of Fundy to its source; and from its source directly North to the aforesaid Highlands, which divide the Rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence: comprehending all Islands within 20 leagues of any part of the shores of The United States, and lying between lines to be drawn due East from the points where the aforesaid Boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy, and the Atlantic Ocean; excepting such Islands as now are, or heretofore have been, within the limits of the said Province of Nova Scotia.[3]

III. It is agreed, that the People of The United States shall continue to enjoy unmolested the right to take Fish of every kind on the Grand Bank and on all the other Banks of Newfoundland; also in the Gulph of St. Lawrence, and at all other places in the Sea, where the Inhabitants of both Countries used at any time heretofore to fish. And also that the Inhabitants of The United States shall have liberty to take fish of every kind on such part of the Coast of Newfoundland as British Fishermen shall use, (but not to dry or cure the same on that Island,) and also on the Coasts, Bays, and Creeks of all other of His Britannic Majesty's Dominions in America; and that the American Fishermen shall have liberty to dry and cure fish in any of the unsettled Bays, Harbours, and Creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said Fishermen to dry or cure fish at such Settlement, without a previous agreement for that purpose with the Inhabitants, Proprietors, or Possessors of the ground.

IV. It is agreed that Creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all *boná fide* debts heretofore contracted.

V. It is agreed that the Congress shall earnestly recommend it to the Legislatures of the respective States, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British Subjects: and also of the estates, rights, and properties of Persons resident in Districts in the possession of His Majesty's arms, and who have not borne arms against the said United States: and that Persons of any other description shall have free liberty to go to any part or parts of any of the 13 United States, and therein to remain 12 months unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties as may have been

[1] The early names of the St. Lawrence from Lake Ontario to its junction with the Ottawa.

[2] Rainy Lake.

[3] Compare these boundaries with those given in the Proclamation of Oct. 7th, 1763, p. 120; and previously discussed in the Report from the Board of Trade of June 8th, 1763, pp. 97-107. It will be observed that England still retained Canada and East and West Florida, obtained by the Treaty of Feb. 10th, 1763.

confiscated ; and that Congress shall also earnestly recommend to the several States, a reconsideration and revision of all Acts or Laws regarding the premises, so as to render the said Laws or Acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of Peace, should universally prevail. And that Congress shall also earnestly recommend to the several States, that the estates, rights, and properties of such last-mentioned Persons shall be restored to them, they refunding to any Persons who may be now in possession the *bonâ fide* price (where any has been given) which such Persons may have paid on purchasing any of the said lands, rights or properties since the confiscation.

And it is agreed that all Persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

VI. That there shall be no future confiscations made, nor any prosecutions commenced against any Person or Persons, for or by reason of the part which he or they may have taken in the present War ; and that no Person shall on that account suffer any future loss or damage either in his person, liberty, or property ; and that those who may be in confinement on such charges at the time of the Ratification of the Treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.[1]

VII. There shall be a firm and perpetual Peace between His Britannic Majesty and the said States, and between the Subjects of the one and the Citizens of the other, wherefore all hostilities both by sea and land shall from henceforth cease : all Prisoners on both sides shall be set at liberty, and His Britannic Majesty shall with all convenient speed, and without causing any destruction, or carrying away any Negroes or other property of the American Inhabitants, withdraw all his Armies, Garrisons, and Fleets from the said United States, and from every Port, Place, and Harbour within the same ; leaving in all Fortifications the American Artillery that may be therein : and shall also order and cause all Archives, Records, Deeds, and Papers belonging to any of the said States, or their Citizens, which in the course of the War may have fallen into the hands of his Officers, to be forthwith restored and delivered to the proper States and Persons to whom they belong.

VIII. The navigation of the River Mississippi, from its source to the Ocean, shall for ever remain free and open to the Subjects of Great Britain, and the Citizens of The United States.

IX. In case it should so happen that any Place or Territory belonging to Great Britain, or to The United States, should have been conquered by the arms of either, from the other, before the arrival of the said Provisional Articles in America, it is agreed that the same shall be restored without difficulty, and without requiring any compensation.

X. The solemn Ratifications of the present Treaty, expedited in good and due form, shall be exchanged between the Contracting Parties in the space of 6 months, or sooner if possible, to be computed from the day of the signature of the present Treaty.

In witness whereof, we, the Undersigned, their Ministers Plenipotentiary, have in their name, and in virtue of our Full Powers, signed with our Hands the present Definitive Treaty, and caused the Seals of our Arms to be affixed thereto.

Done at Paris, this 3d day of September, in the year of our Lord, 1783.

(L.S.) D. HARTLEY.

(L. S.) JOHN ADAMS.
(L. S.) B. FRANKLIN.
(L. S.) JOHN JAY.

[L.S.]
C. O.
(Quebec 1768–1787. Vol. 1.)

[1] There was much dispute, alike as to principles and facts, regarding the fulfilment or non-fulfilment of the terms of the treaty, especially the fifth and sixth articles. In consequence of the claims of Britain as to non-fulfilment on the part of the United States, she declined to give up the frontier posts on the great lakes, as required by the seventh article. These were retained until the settlement effected by the Treaty of 1794, which provided for the evacuation of the posts before June 1st, 1796. See British and Foreign State Papers, Vol. I, p. 784.

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ADDITIONAL INSTRUCTIONS TO HALDIMAND.[1]

[L. S.]
C. O.
(Quebec 1768–1787, Vol. 1.)

George R.

Additional Instruction to Our Trusty and Welbeloved Frederick Haldimand Esq^r Our Captain General and Governor in Chief of Our Province of Quebec, in America or to the Commander in Chief of the said Province for the time being. Given at Our Court at S^t James's the 16^th Day of July 1783. In the Twenty third year of our Reign.

Whereas many of Our Loyal Subjects Inhabitants of the Colonies and Provinces, now in the united States of America are desirous of retaining their Allegiance to Us, and of living in our Dominions, and for this purpose are disposed to take up and improve Lands in Our Province of Quebec; and We being desirous to encourage our said Loyal Subjects in such their Intentions, and to testify our approbation of their loyalty to Us, & Obedience to our Government, by alloting Lands for them in our said Province; And whereas We are also desirous of testifying our approbation of the Bravery and Loyalty of our Forces serving in our said Province, and who may be reduced there, by allowing a certain quantity of Land to such of the Non-Commissioned Officers and private Men of Our said Forces, who are inclined to become settlers therein. It is Our Will and pleasure, that immediately after you shall receive this Our Instruction, you do direct our Surveyor General of Lands for our said Province of Quebec, to admeasure & lay out such a Quantity of Land as you with the advice of our Council shall deem necessary & convenient for the Settlement of our said Loyal Subjects, the non-Commissioned Officers & private Men of our Forces which may be reduced in our said Province, who shall be desirous of becoming Settlers therein; such Lands to be divided into distinct Seigneuries or Fiefs, to extend from two or four leagues in front, and from three to five leagues in depth, If situated upon a Navigable River, otherwise to be run square, or in such shape and in such quantities, as shall be convenient & practicable—and in each Seigneurie a Glebe to be reserved and laid out in the most convenient spot, to contain not less than 300 nor more than 500 Acres;[2] the propriety of which Seigneuries or Fiefs shall be and remain vested in Us, our Heirs and Successors, and you shall allot such parts of the same as shall be applied for by any of our said Loyal Subjects Non-Commissioned Officers & Private Men of our Forces reduced as aforesaid, in the following proportions; that is to say

To every Master of a Family, One Hundred Acres, and Fifty Acres for each person, of which his Family shall consist

To every single Man Fifty Acres.

To every Non-Commissioned Officer of Our Forces reduced in Quebec Two hundred Acres.

To every private Man reduced as aforesaid One Hundred Acres

And for every Person in their Family Fifty Acres.

The said Lands to be held under Us Our Heirs & Successors, Seigneurs of the Seigneurie or Fief in which the same shall be situated, upon the same terms, acknowledgements and services, as Lands are held in our said Province under the respective Seigneurs holding and possessing Seigneuries, or Fiefs therein; and reserving to Us our Heirs and Successors, from and after the expiration of Ten years from the Admission of the respective Tenants, a Quit Rent of one half penny P Acre.[3]

It is our further Will and pleasure, that every person within the Meaning of this Our Instruction, upon their making application for Land, shall take the Oaths directed

[1] Canadian Archives, M 230, p. 221.

[2] This is the foundation of the subsequent Reserves for religious and educational purposes. Earlier forms of such Reserves, however, are found in the American Colonies.

[3] Express instructions were given by Haldimand to Sir John Johnson, who had charge of the settlement of the Loyalists in what is now Eastern Ontario, that the new surveys should not be called townships, or given names, but be numbered as Royal Seigneuries to be held under feudal tenure. See Haldimand Papers, B 65, p. 34.

by Law before you or our Commander in Chief for the time being, or some Person by you or him Authorized for that purpose, and shall also at the same time make and subscribe the following declaration, Viz' "I A-B. do promise and declare that I will maintain and defend to the utmost of my power the Authority of the King in his Parliament as the supreme Legislature of this Province." which Oaths and declaration shall also be taken made and subscribed by every future Tenant before his, her, or their Admission, upon Alienation, descent, Marriage or any other wise howsoever, and upon refusal, the Lands to become revested in Us our Heirs and Successors. And it is our further Will and pleasure, that the expence of laying out and surveying as well the Seigneuries or Fiefs aforesaid as the several Allotments within the same, and of the Deed of Admission shall be paid by the Receiver General of Our Revenue in the said Province of Quebec out of such Monies as shall be in his hands, upon a Certificate from you or Our Commander in Chief for the time being in Council, Oath being made by our Surveyor General to the Account of such Expence; Provided however that only one half of the Usual and accustomed Fees of Office shall be allowed to our said Surveyor General or any other of Our Officers in the said Province entitled thereunto upon any Survey or Allotment made, or upon Admission into any Lands by virtue of this our Instruction

And whereas We have some time since purchased the Seigneurie of Sorel from the then Proprietors,[1] the Lands of which are particularly well adapted for Improvement and Cultivation, and the local situation of the said Seigneurie makes it expedient that the same should be settled by as considerable a number of Inhabitants of approved Loyalty as can be accommodated therein with all possible dispatch.

It is therefore our Will and pleasure that you do cause all such Lands within the same as are undisposed of, to be run out into small allotments, and that you do alot the same to such of the Non Commissioned Officers and private Men of our Forces, which may be reduced in Our said Province, or such other of Our Loyal Subjects as may be inclined to settle and improve the same, in such proportions as you may Judge the most conducive to their Interest and the more speedy settlement of our said Seigneurie The Lands so alloted to be held of Us our Heirs and Successors, Seigneurs of Sorel upon the same conditions and under the same reserved rent at the expiration of ten years, as the other Tenants of the Seigneurie now hold their Lands and pay to Us, and also of taking the Oaths and making and subscribing the declaration as herein before is mentioned and directed. The Expence of making the said allotments and Admission thereunto to be also paid and defrayed in like manner as those in the Seigneuries directed to be laid out by this our Instruction.

And it is Our Will and pleasure that a Record be kept in the Office of the Receiver General of our Revenue of every admission into Lands as well as by virtue of this our Instruction, as in cases of future Admission by Alienation or otherwise, a Docquet of which shall be transmitted yearly to Us thro' one of our principal Secretary's of State, and also a Duplicate thereof of to Our High Treasurer or the Commissioners of our Treasury for the time being.

G. R.

[L.S.]
C. O.
(Quebec 1768-1787, Vol. 1.)

George R.

Additional Instruction To Our Trusty and Welbeloved Frederick Haldimand, Captain General & Governor in Chief of Our Province of Quebec in America. Given at Our Court at S^t James's the Twenty Sixth Day of May 1785 In the 25^th year of Our Reign[2]

Whereas in pursuance of the Powers vested in Us by an Act of Parliament passed during the present Session Intituled "An Act for continuing for a limited Time, an

[1] After considerable negotiation, the Seigniory of Sorel, which commanded the highway between Canada and the southern colonies recently acknowledged as independent, was purchased by Governor Haldimand for the Crown, in 1780, at a cost of £3,000 Stg. See Haldimand Papers, B 55, p. 4.
[2] Canadian Archives. M 230 p 226

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"Act made in the Twenty third Year of the reign of His present Majesty, Intituled "An Act for preventing certain Instruments from being required from Ships belonging "to the United States of America, and to give to His Majesty for a limited Time cer-"tain Powers for the better carrying on Trade and Commerce between the Subjects of "His Majesty's Dominions and the Inhabitants of the said United States, and for con-"tinuing for a limited Time, an Act made in the 24th year of the reign of His present "Majesty, Intituled an Act to extend the Powers of an Act made in the Twenty third "year of His present Majesty, for giving His Majesty certain Powers for the better car-"rying on Trade & Commerce between the Subjects of His Majesty's Dominions and "the Inhabitants of the United States of America, to the Trade and Commerce of this "Kingdom with the British Colonies and Plantations in America with respect to cer-"tain Articles therein mentioned"[1] We did by and with the Advice of Our Privy Council, by our order in Council, dated the 8th of last Month, Order and direct, that no Goods, the Growth or Manufacture of the Countries belonging to the United States of America should be imported into Our Province of Quebec by Sea; It is Our Will and Pleasure that You do in all Things conform yourself to Our said Order in Council.—And Whereas It is necessary to regulate the Intercourse by Land and by Inland Navigation between Our said Province, and the Countries adjoining thereunto, belonging to the United States of America, It is Our Will and Pleasure that You do propose to the Legislative Council of Our said Province, the passing an Ordinance for preventing the carrying of any Peltry out of the said Province into the said Countries, and You are hereby particularly directed and enjoyned to cause the several Laws made for preventing the bringing of any Foreign Rum or Spirits, or, Except from Great Britain, any Goods or Manufacture of any Foreign European Countries, or of Asia, into Our Plantations and Colonies, to be duly and effectually enforced in Our Province of Quebec[2]

G. R.

[L.S.]

C. O.

(Quebec 1768–1787, Vol. I.)

George R.

Additional Instruction To Our Trusty and Welbeloved Frederick Haldimand Esqr Our Captain General and Governor in Chief of Our Province of Quebec in America, or to the Commander in Chief of the said Province for the Time being. Given at Our Court at St James's the Twenty fifth Day of July 1785. In the Twenty fifth year of Our Reign.[3]

Whereas it will be for the General Benefit of Our Subjects carrying on the Fishery in the Bay of Chaleure in Our Province of Quebec, that such part of the Beach and Shore of the said Bay, as is ungranted, should be reserved to Us, Our Heirs and Successors; It is therefore Our Will and pleasure, that you do not in future, direct any Survey to be made or Grant passed for any part of the ungranted Beach or Shore of the said Bay of Chaleure, except such parts thereof as by Our Orders in Council dated the 29th of June and 21st July 1785, are directed to be granted to John Shoolbred of London Merchant and Messrs Robin Pipon and Company, of the Island of Jersey Merchants, but that the same be reserved to Us, Our Heirs and Successors, together with a sufficient quantity of Wood-Land adjoining thereto necessary for the purpose of carrying on the Fishery; The Limits of such Wood-Land so to be reserved, to be determined upon and ascertained by You and Our Council for Our said Province of Quebec,

[1] This is 25 Geo. III. cap. 5. See "Statutes at Large" Vol. 35, p. 7.

[2] The first measure towards regulating commercial relations with the adjoining States, which was passed by the Legislative Council of Quebec, was the Ordinance of 1787, 27 Geo. III., cap. 8, "For the importation of tobacco, pot and pearl ashes, into this province, by the inland communication by Lake Champlain and Sorel." This was followed the succeeding year by the ordinance 28 Geo. III., cap. 1, "Further to regulate the inland Commerce of this Province, and to extend the same." In the latter the prohibition of the export of peltry is introduced, as also the prohibition of the import of rum, spirits, and British manufactured goods &c., in accordance with this Instruction, which simply supported the general Trade Instructions given to all colonial governors. See p. 48

[3] Canadian Archives, M. 230, p. 228.

in such manner, as from the most Authentick Information shall appear to you and them most Convenient and proper for that purpose; It is Nevertheless Our Intention, and We do hereby Signify to you Our Will and pleasure, that the Free Use of such Beach or Shore, and of the Wood-Lands so to be reserved shall be allowed by you or any person Authorized by you, to such of Our Subjects as shall resort thither for the purpose of carrying on the Fishery, in such proportions as the Number of Shallops he or they shall respectively employ may require; provided that if any Fisherman who shall have permission to Occupy any part of the said Beach or Shore and Wood-Land for the purpose of the said Fishery, shall not during any One Season, continue so to Occupy and Employ any part of the said Beach and Shore and Wood-Lands so allotted to him, you or any person authorized by you as above may and shall allow the Use of such part to any other Fisherman who shall apply for the same, for the purpose of carrying on the Fishery——

And whereas it may be necessary to Establish local Regulations to prevent Abuses as well as disputes and Misunderstanding between the Fishermen resorting to the said Beach or Shore, It is Our Will and Pleasure that you by and with the Advice and Consent of Our said Council, do frame such Regulations as to you shall appear necessary to Answer those Salutary purposes, and transmit the same to Us thro' One of Our principal Secretaries of State for Our pleasure therein by the first Opportunity.[1]

G. R.

HALDIMAND TO NORTH.[2]

Private QUEBEC October 24th 1783

Col. Cor. Canada (Quebec) Vol. 22 p. 101.

My Lord

In Addition to the Public Letters which I have had the Honor to write relative to the State of this Province, I have to acquaint you in a private Letter, of Some things which concerns the States adjoining to it. I have nothing new to Communicate with Regard to our Indian Allies. Since the Provisional Treaty has been Made public, several Persons of influence in the State of Vermont have been here at different times, they all agree in describing these People as very Averse to Congress and its Measures, they now insist that in Case Congress should admit their Claim to be the 14th State, upon an exemption from any part of the debts contracted previous to their Admission, as having never been represented in Congress, they could not be bound by it's Acts; They Seem to have an entire Confidence that in Case Congress Should think of reducing them by Force, the Neighbouring States of New England could never be prevailed upon to assist in the attempt, for which reason they make no Scruple of Setting the State of New York & its Claims of Jurisdiction over them at defiance. They give great encouragement to the Royalists from the Neighbouring Provinces to Settle amongst them and have already taken possession of the Lands on the South Side of Lake Champlain to the Boundary Line at the Degree 45.—They made no Scruple of telling me that Vermont must either be annexed to Canada, or become Mistress of it, as it is the only channel by Which the Produce of their Country can be Conveyed to a Market, but they assured Me that they rather Wished the former. They are really a

[Margin: relating to the neighbouring States. Vermont State.]

[Margin: their Quarrel with the State of N. York]

[1] The first Ordinance passed relating to these fisheries was that of 28 Geo. III., cap. 6, "For regulating the Fisheries in the River St. Lawrence, in the Bays of Gaspé and Chaleurs, on the Island of Bonaventure, and the opposite shore of Percé." Ordinances Made and passed by the Governor and Legislative Council of the Province of Quebec, 1795. p. 153.

[2] Canadian Archives, Haldimand Papers, B 56, p. 149. The first portion of this despatch relates to the extensive negotiations, both before and after the Treaty of 1783, between Haldimand and a section of the people of Vermont, chiefly through the agency of Ethan Allen and a few others. Lord North, to whom this despatch is addressed, held office as one of the Secretaries of State from April 2nd, to Dec. 23rd, 1783.

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hardy enterprising People, and tho' it was in my Power with the greatest ease during the War to destroy Such of them as Should Settle on Lake Champlain, it was with great difficulty that I could deter them from attempting it, and not till after by experience they found that I was determined to effectuate by force what I could not gain by Admonition.—Tho' I have heard them with Patience, I have assured them that I could not interfere in these Matters as I had the Most positive Orders from the King to do every thing in my power to Conciliate the Affections of the Subjects of the united States to those of Great Britain. The State of New York is Making Settlements in the Same Manner on the opposite Side of the Lake. —The Conduct of these People is not Justified by the Rules of War, for until the Definitive Treaty is made, the Provincial One[1] is no more than preliminaries to a Peace, but Circumstanced as I am, and Willing to Shun every thing which could be construed as an inclination to infringe the Cessation of Hostilities I have thought it best not to oppose them, tho' I foresee great and Mischievous Consequences to this Province from the Settlement which the State of New York is making near the Boundary Lines. The Americans are Settling Captain Hazen, now a Brigad[r] General, with the few Canadians remaining of the Corps upon Lake Champlain, they give them Lands and a Sum of Money proportionate to their Rank and Services. As their Number is Small, the expence will be trifling, but Still these Canadians will be handsomely rewarded, and the Encouragement given to them will have considerable Influence upon the Minds of their Country Men upon Some future Occasion. It will be Totally impossible to prevent frequent Intercourse between them, and the Settlement being So Contiguous to the Boundary Line will afford a Safe and easy Azylum to the Seditious and dissaffected of this Country who are very numerous in the Parishes adjoining to Lake Champlain. This Province can only be preserved by bringing back the Canadians to a regular Subordination, and by rendering them useful as a well disciplined Militia—In order to effectuate this, the Authority of Government Must be Strengthned & not diminished. Be assured My Lord, that every Scheme calculated for the latter purpose, & however disguised, has its Source from the Partizans and Emissaries of the American States. To me personally considered, it Must be a Matter of indifference What form of Government is adopted for this Province, but I would be deficient in that Duty which I owe to the King and the British Nation, if I did not acquaint Your Lordship for His Majesty's Information, that in Order to keep this Country dependent upon Great Britain, no Change Should be Made in the Act of Parliament which regulates it. The Legislature here, has Power to alter Such parts of the French Law as may be found by Experience unadequate to the Circumstances of a Commercial Country and is possessed on the Other Hand with Authority to alter Such parts of the Criminal Law of England as are improper or inapplicable to the State of the Colony. These Alterations ought to be Made with prudence and discretion, and no doubt the Legislative Council will do it at a proper time.—It is an easy Matter to repeal the Quebec Act, but it will be a difficult Task to Substitute another in its Place, The Saving by having a House of Assembly £12,000 p[r] Annum, which may be the difficiency one Year with Another after the Revenues of the Province have been appropriated to Pay the Civil Establishment cannot be put in Competition with the Many bad Consequences which would attend the Measure.

The State of N: York settling along Lake Champlain

bad consequences that will follow

also to the Canadians

The Canadians to be Governed by a well disciplined militia

The Quebec Bill to be kept in force

House of Assembly how to be supported & Paid

I am the More explicit on this Subject with your Lordship, as being upon the Spot, I know the Views and Motives of the Persons who have been active in setting forth Petitions and creating Jealousies and divisions

[1] The provisional articles of peace were signed at Paris, Nov. 30th, 1782. British and Foreign State Papers, vol. I, p. 773. The declaration relative to the suspension of hostilities was signed at Versailles Jan. 20th, 1783. Ibid. p. 777.

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Interested views of the People wishing for a Change of Government.

in the Province. Some wish a form of Government, which by resembling the Republicain one in the Neighbouring States, may prepare the People for an Union with them upon Some future Event; and Many wish to vent their resentment against those who have either prevented or brought to light their Abuse of the Public Money, but much of the future Welfare of the People of this Province or of its utility to Great Britain will depend upon the Arrangements which will be Made in Consequence of the Definitive Treaty, and of the Measures which the Governor will be instructed to pursue.—

I have the Honor to be with the greatest Respect and Esteem
My Lord
Your Lordship's Most obedient
& Most Humble Serv[t]
FRED: HALDIMAND

The Right Honble Lord North
(original)

Col. Cor. Canada Quebec. Vol. 23 p. 13.

HALDIMAND TO NORTH.[1]

QUEBEC 6[th] November 1783.

My Lord

* * * * * *

Your Lordship has already been made acquainted with the general State of this Country, I am told that in the Petition which Some of His Majesty's Antient Subjects have prepared to be presented to Parliament, they lay great Stress upon the Number of Loyalists who are to Settle in the Province, as an Argument in favor of the Repeal of the Quebec Act and for Granting a House of Assembly, but I have great Reason to believe these unfortunate People have Suffered too Much by Committees and Houses of Assembly, to have retained any prepossession in favor of that Mode of Government, and that they have no Reluctance to Live under the Constitution established by Law for this Country. At the Meeting of the Legislative Council I intend to propose and recommend the Passing an Ordinance for the Introduction of the Habeas Corpus Act[2] or Some other Mode for the personal Security, which will put the Liberty of the Subject in that Respect upon the Same footing as in England, and which will remove one of the ill grounded Objections to the Quebec Act, for tho' that Law had never been introduced into the Province, people were taught to believe that the Quebec Act had deprived the Inhabitants of the benefit of it.—

I have the Honor to be with the greatest Respect and Esteem
My Lord
Your Lordship's Most Obedient
and Most Humble Servant

FRED: HALDIMAND

The Right Honorable Lord North
(original)

[1] Canadian Archives, Haldimand Papers, B 56, p. 170. The first part of this despatch deals with the preparations for the settlement of the Loyalists.

[2] On Feb. 7th, 1782, in the Legislative Council, "Mr. Allsopp moves for leave to bring in 3 Ordinances in conformity to the 12[th] & 13[th] Articles of his Majesty's Instructions." The first related to English Law and trial by jury in commercial matters; the second authorized and required the judges of all the Courts to issue writs of Habeas Corpus according to the rules and laws of England; the third provided for the suspension of the second ordinance for a year. See Q 20. p. 244. This motion, however, was defeated and immediately afterwards Allsopp was suspended from the Council on the grounds of his protest of 1780; See note 2, p. 488.

CSL

FINLAY TO NEPEAN.[1]

QUEBEC 22[d] October 1784.

SIR,

The Advocates for a House of Assembly in this Province take it for granted that the people in general wish to be represented; but that is only a guess, for I will venture to affirm that not a Canadian landholder in fifty ever once thought on the subject and were it to be proposed to him, he would readily declare his incapacity to Judge of the matter. Although the Canadian Peasants are far from being a stupid race, they are at present an ignorant people, from want of instruction—not a man in five hundred among them can read; perhaps it has been the Policy of the Clergy to keep them in the dark, as it is a favourite tenet with the Roman Catholic Priests, that ignorance is the mother of devotion. The Females in this Country have great advantage over the males in point of Education. The Sisters of the Congregation, or grey Sisters as they are called, are settled in the Country Parishes here and there to teach girls to read, write, sew, & knit Stockings: there's only a few of that Sisterhood—they are the most useful of any of the religious orders in Canada.

Before we think of a house of Assembly for this Country, let us lay a foundation for useful knowledge to fit the people to Judge of their Situation, and deliberate for the future well-being of the Province. The first step towards this desireable end, is to have a free School in every Parish—Let the schoolmasters be English if we would make Englishmen of the Canadians; let the Masters be Roman Catholics if it is necessary, for perhaps the people, at the instigation of the Priests, would not put their children under the tuition of a Protestant.

The natural born subjects say, that they settled in Canada under the Kings promise to call a house of Assembly as soon as the circumstances of the Province would permit. The time is now come, say they; they likewise state many priviledges that they hoped to enjoy on the faith of the Royal proclamation, of which they were deprived by the Quebec Act.

It is not yet ascertain'd that the people wish for a house of Assembly!—Is it not the very essence of representation that the members of the house be chosen by the free and uncontrolled voices of the people in their districts? The Quebec Act gives full power and authority to His Majestys Legislative Council to make Laws and grant all manner of Priviledges to render His Majestys subjects in Canada free and happy; if they are not actually so, the Legislative Council alone is to blame, not the Quebec Act, for by it the Council may alter even the Criminal Law.

Before any Act passes giving the Canadians a house of Assembly, let us be sure that it will be agreeable to a Majority of the landholders—Let the nature of free representation be set forth, let the duty of a representative be explained, and convey a proper idea of the powers a house will have to frame laws, and lay taxes: this necessary information ought to be drawn up in plain clear terms, and read to the people every

[1] Mr. Hugh Finlay, as already indicated (see note 3, p. 486) was Postmaster General and a member of the Council. Evan, afterwards Sir Evan Nepean was appointed the first Permanent Under Secretary of State for the Home Department, in 1782. This office was created in consequence of the readjustment of a number of offices of state. The office of Secretary of State for the Colonies, created in 1768, was abolished along with the Board of Trade and Plantations, in 1782, under the Act of 22nd Geo. III. cap. 82, the preamble to which states—"Whereas his Majesty, from his paternal regard to the welfare of his faithful people, from his desire to discharge the debt on his civil list, without any new burthen to the publick, for preventing the growth of a like debt for the future, as well as for introducing a better order and economy in the civil list establishments, and for the better security of the liberty and independency of parliament, has been pleased to order, that the office commonly called or known by the name of Third Secretary of State, or Secretary of State for the Colonies; the office or establishment commonly known by the name and description of The Board of Trade and Plantations; the offices of lords of police in Scotland;" &c. &c. "shall be, and are hereby utterly suppressed, abolished, and taken away." Statutes at Large, vol. 34, p. 143. The former duties of the Board of Trade and Plantations were to be executed by a Committee of the Privy Council. See sec. 15 of the Act. The work of the Colonial Secretary was transferred to the Home Department, formerly the Southern Department, in which there was also a Parliamentary Under Secretary.

sunday for three months by the curate of each Parish immediately after divine service, that the inhabitants or country people, may turn it in their thoughts, consult among themselves and advise with the most sensible in the Parish, be they French or English, to enable them to come to a determination concerning this matter.

Let those who assert that it is necessary for the wellbeing of the people that the habitans have a share in the Government, do their best endeavours to show them by solid arguments that it will be for their good—At the end of three months, or six if more time is requisite, let the Captains of Militia in presence of the Curate and four of the most notable in the Parish take the voices of the people for House, or no House? If a majority throughout the Province say House, grant their desire—if they say no house—the British Parliament will not force that form of Government upon them: the ancient subjects, (a small proportion of the people) ought not unreasonably to insist on that which a majority of their fellow Citizens refuse after mature deliberation.

When the people, by means of education, become more enlightened, they will probably wish for an alteration of the present system—whenever that desire appears let the alteration be made—in the mean time let it always be held up that a house will be called whenever a majority of the people apply for it.

I conceive, that whenever taxation is mentioned, the Peasant will reject the idea of a house, from his narrow way of thinking, and attachment to money. Were a house to be forced on them, and that house lay taxes to defray the expence of Government and a thousand useful purposes which the English Members (if any English there should be chosen) would be continually be projecting, they would deem themselves oppressed and probably wish to join the American confederacy, not possessing knowledge enough to foresee the evil consequences of that Junction. The Enemys of Government (and there never is wanting turbulent people in all Countrys) would make a handle of their discontentment and keep up a spirit which they would hope to turn to account one day or other.

We at this moment enjoy all the benefits arising from the Habeas corpus act.[1]

The Legislative Council have repeatedly refused to grant Jurys in civil cases. Say the people, there is no Judge on the Bench capable of determining a Commercial point so well as a Jury of Merchants, nay 'tis absolutely impossible that Right can be done to the subject by Judges not bred to the Law, under that anticommercial ill-understood System la coutume de Paris, without the intervention of Juries—Jurys are an Englishman's birth right.—Why refuse optional Juries? asks an old subject—because, answer the Judges, they are too burthensome on the people. No replys the Englishman, Jurys are not burthensome where the Courts are properly regulated by terms, but here you have weekly Courts, as inconvenient as injurious since they tend by their frequency to deprive the Subject of trial by Jury, a right which an Englishman never can give up, and which His Majesty was pleased by His 13th Instruction strenuously to recommend, but the Judges who have had most influence with our Governors have found means to prevent our having Jurys in the Civil Courts, as they have been looked on as a pernicious check on the power of the Bench.[2]

[1] In his speech to the Legislative Council at the opening of the session, on March 22nd, 1784, Governor Haldimand stated that he had regretted that the condition of public affairs had not hitherto permitted of his recommending an Ordinance for the better security of the liberty of the subject, now, however, he would present one to them. See Q 23, p. 152. While this ordinance was being considered, Mr. Grant of St. Roc moved that the following clause should be incorporated :—"And it shall be clearly understood at all times hereafter, that the Common and Statute Law of England in as far as the same is favourable and protective of personal Liberty, Safety and Security is the right of all His Majesty's faithful subjects in this Province; And as such shall be the rule whereby to decide every case and situation not provided for by the present Ordinance." Q 23, p. 247. This was defeated by nine to seven. But inasmuch as the preamble to the ordinance recited the 13th article of the Instructions to the Governor, the same minority supported a motion, introduced by Mr. Finlay, to the effect that the ordinance as passed did not fulfil the conditions of the 13th article. The minority consisted of Messrs. Grant, DeLery, Collins, Levesque, Dunn, Finlay and Lt. Gov. Hamilton; and each of these, except Mr. Collins, recorded his dissent from the vote of the majority. See Q 23, p. 255 *et seq.* The Ordinance introduced by Haldimand and passed was 24 Geo. III., cap. 1. "For securing the Liberty of the Subject, and for the prevention of Imprisonments out of this Province." Ordinances made and passed by the Governor &c., p. 57.

[2] Repeated efforts, extending from 1777, had been made to secure an ordinance granting the right of trial by jury in civil cases, but not until the departure of Haldimand, Nov. 16th, 1784, was there any prospect of its being passed. Under Lt. Governor Hamilton's administration, however, in the spring of 1785, this feature was embodied in the new Ordinance for Regulating the Proceedings of the Civil Courts. See below, p. 529.

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It has been remark'd that men never wish for more power than the Law gives them, unless they intend to use it—On trials for Damages, the want of Juries may be severely felt.

May I, Sir, refer you to a sensible man Mr. Grant of St. Roc, (a Member of the Legislative Council) for ample information concerning our Courts of Justice—he lives at No 42 Newman street.

It has been represented that poor people cannot afford to attend as Jurors on civil causes—Let them be paid and they will cheerfully serve—'tis but reasonable that the contending partys should pay.

I have taken the liberty to trouble you with this letter at the desire of my friend Governor Skene.

I have the honor to be Sir

Your most obedient and very humble
Servant

HUGH FINLAY

Evan Nepean Esqr
(original)

PETITION FOR HOUSE OF ASSEMBLY.[1]

TO THE KING'S MOST EXCELLENT MAJESTY.

The humble Petition of Your Majesty's Ancient and New Subjects; Inhabitants of the Province of Quebec.

May It Please Your Majesty.

After the Conquest of the Province of Canada by the Arms of Great Britain, Your Petitioners in compliance with Your Majesty's gracious and royal Proclamation,

[1] Canadian Archives, Q 24-1, p. 1. Given also in Q 27-1, p. 431. On the 22nd of April, during the session of the Legislative Council, Mr. Grant made the following motion :—"I move that a Committee of this Legislative Council be immediately named to take into Consideration and draw up an humble petition to His Majesty and Parliament praying that an Assembly, or such other *Elective Body* be called to represent the people of this Province, and in such manner and number, and so composed as to His Majesty in his Wisdom shall seem fit. In which Assembly, or Elective Body, together with His Majesty's Council and Governor, shall be vested the usual Legislative Powers of an English Colonial Government. And I move that the following among other Reasons may be suggested in support of the said petition and this Motion." These reasons may be summarized as follows; 1st. As the Quebec Act prohibits the Council from levying taxes, except to a very limited extent for inhabitants of towns and districts, an elective Assembly is necessary to adequately provide for the needs of the Province. 2nd. For 24 years the Canadian people have been led to expect the establishment of Constitutional Government. 3rd. These expectations probably explain why the power of local taxation has not been called for, with the result that local improvements, such as roads, have either been maintained by the Crown or have fallen into decay. 4th. An Assembly with the power of taxation is the more necessary that the King, by the Act of 18 Geo. III., cap. 12, has relinquished the right of internal taxation in the colonies. 5th. That the power of raising revenue for the general welfare of the people is as essential to free government and the rights of British subjects as personal liberty and security. 6th. Representative Government is necessary in view of the immigration of the Loyalists, and this is an opportune period to petition for it. 7th. The same petition should pray the King to direct trial by jury in civil cases, where desired by either party, the present system being anomalous. 8th. The extraordinary powers given to the Legislative Council by the 8th, 10th, 11th, & 14th sections of the Quebec Act, while its members are entirely dependent for their seats on the pleasure of the Crown, nine of them forming a quorum, and hence five having the power to conduct the business of the Province. See Q 23, pp. 269-276. The discussion on this motion was delayed by the order to have it translated into French. In the meantime, St. Luc La Corne moved for an address to the Governor, expressing satisfaction with the Quebec Act and praying for its continuance. This was carried on a division of 12 to 5. As ultimately presented, the address, with Haldimand's reply, was as follows :—"May it please Your Excellency. We the members of the Legislative Council take the Liberty to represent to Your Excellency our Gratitude for His Majesty's paternal goodness in the gracious protection he has granted to the people of this Province during the Troubles which have distracted the greatest part of North America. At the same time we take the Opportunity of renewing our Solicitations to Your Excellency that you will be pleased to convey to His Majesty the sense we have of the great advantage which has accrued to the people of this Province, and to the tranquility and safety of it, from

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bearing date the 7th day of October 1763,[1] Settled and became established, in the New acquired Colony of Quebec; in the full reliance on the faith of the Crown of Great Britain, as expressed in that Proclamation, for the enjoyment of those Laws, that Freedom and Security in Canada, which the Principles of the English Constitution afforded, in every part of the British Dominions in America. YOUR PETITIONERS and the Inhabitants of the Province, have chearfully on every occasion, obeyed the Controuling power of the Parliament of Great Britain, and with patience have suffered, during a period of Anarchy and War, rather than wound Your Majesty's feelings, or embarrass the Throne with Remonstrances and Petitions, at a time when the safety of the Nation, made sacred every moment of Public deliberation. The Actions and Conduct of Your Petitioners when truly represented, will best express to Your Majesty, the Sincerity of their Loyalty and Attachment to the Crown and Government of Great Britain.

YOUR PETITIONERS look with Concern on the burthen of Great Britain, and with great Pain and Commiseration they see the distresses of Your Majesty's loyal Subjects, who, driven from their Estates, Wealth, and Possessions are daily taking Shelter in this British Colony; though their unsettled and distressed Situation, may for the present hinder them from bringing forward their Petitions and their Claims; Your Majesty will readily perceive that a Government similar or Superior, to that under which they were born, had lived, and were happy, must be considered by those Your Majesty's unfortunate Subjects as an Affectionate proof of Your Majesty's Paternal Care and Regard for them; and the first Comfort which Your Majesty in releif to their Distresses can now grant: And the more so, as it will be a Blessing not merely granted to them, but extended to their Children and Posterity. YOUR PETITIONERS fully persuaded that the Welfare and Happiness of Your Majesty's Subjects, are objects of Your Majesty's serious, and benign Consideration—beg leave to lay their Petition at the foot of the Throne and ardently to request Your Majesty's Interposition for the Repeal of the Quebec Bill; allowing such Priviledges as are already granted to the Roman Catholick Religion; as being inadequate to the Government of this extensive Province; the Cause of much Confusion in our Laws, and fraught with trouble and uneasiness to Your Majesty's loyal Subjects here. And that Your Majesty will be pleased to Concur in establishing your affectionate Subjects of this Province, in the full Enjoyment, of their civil Rights as British Subjects; and in granting them a Free, Elective House of Assembly. In these hopes they humbly presume to Suggest, that Clauses of the following Import, may be inserted in the Act of Parliament, which shall be made to Confirm a free Constitution to this Country.

1st THAT the House of Representatives or Assembly,—be chosen by the Parishes, Towns and Districts of the Province, to be Composed of Your Majesty's Old and New Subjects, in such manner as to Your Majesty's Wisdom may seem most proper, that the Assembly be triennial, and the Members elected every three Years.[2]

2d THAT the Council consist of not less than Thirty Membres and in case of Division on any measure before them, that no Act shall be passed, unless at least Twelve Members agree to carry the Vote. That the appointment of the Members, may be

the Act of Parliament which was passed in their favour the 14th year of His Majesty's Reign; the continuation of which Law, the result of that generous and tolerating Spirit which distinguishes the British Nation, will be the means of rendering the people of this Province indissolubly attached to the Mother Country, and happy in the Enjoyment of their Religion, Laws and Liberties. (Signed)

Henry Hamilton President."

"The Governor's Answer—

Gentlemen. I will transmit your Address to the Secretary of State, to be laid before His Majesty. The Ordinance passed this Session for securing the personal Liberty of the Subject, will contribute to remove the prejudices of the misguided against the Act of Parliament which regulates the Province, and at the same time will be the means to frustrate the Attempts of the malicious and designing to create confusion and dissention within it. (Signed) Fred. Haldimand." Q 23, p.317.

The vigour of this reply was doubtless heightened by the fact that of the five members who voted against the Address, four recorded their reasons of dissent. These were Lt. Gov. Hamilton, Hugh Finlay, F. Levesque, and J. G. C. DeLery. They all considered that the changed conditions resulting from the independence of the late Colonies and the arrival of the Loyalists required changes in the Quebec Act and a more liberal and representative form of government. See Q 23, pp.287–305.

[1] See p.119.

[2] For a more detailed plan of the proposed Assembly, drawn up by the Committees of Quebec and Montreal at the same time as this petition, see the document which follows this, p. 510.

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during their residence in the Province, and for Life ; yet subject to temporary leave of Absence, as mentioned in the 11th Article ; And that they serve as Councellors, without Fee or Reward.

3d THAT the Criminal Laws of England be continued, as at present established by the Quebec Act.

4th THAT the ancient Laws and Customs of this Country, respecting landed Estates, Marriage Settlements, Inheritances and Dowers, be continued ; yet subject to be altered by the Legislature of Quebec ; And that Owners may alienate by Will, as provided by the 10th Section of the Quebec Bill.

5th THAT the Commercial Laws of England, be declared to be the Laws of this Province, in all Matters of Trade and Commerce, subject to be Changed by the Legislature of Quebec, as in the preceeding Article.

6th THAT the Habeas Corpus Act, the 31st Charles 2d be made part of the Constitution of this Country.

7th THAT Optional Juries be granted, on all Trials in Courts of Original Jurisdiction. That they be regularly Baloted for, and a Pannel formed as in England ; either in the Case of an ordinary or a Special Jury, at the option of the Party applying for the same, And that Nine Members out of the Twelve, may in Civil Causes, be sufficient to Return Verdicts, subject to be Modified by the Legislature of Quebec, as in the 4th Article.

8th THAT the Sheriffs be elected by the House of Assembly, and approved and Commissioned by the Governor, at the Annual meeting of the Legislature. That they hold their Appointment during the period elected for, and their good Behaviour ; and that they find reasonable Security, for a faithful discharge of their Duty.

9th THAT no Officer of the Civil Government, Judge or Minister of Justice, be suspended by the Governor or Commander in Chief for the time ; from the Honours, Duties, Salaries or Emoluments, of his Appointment ; but with the advice and Consent of Your Majesty's Council, for the Affaires of the Province ; which Suspension shall not Continue, after the Annual Sitting of the Council ; unless it be approved by the same. The cause of Complaint if approved, to be thereafter reported to Your Majesty, for Hearing and Judgement thereon.

10th THAT no New Office be Created, by the Governor or Commander in Chief for the time ; but with the Advice and Consent of Your Majesty's said Council and be approved at their Annual Meeting, as in the preceeding Article.

11th THAT all Offices of Trust be executed, by the Principal in the Appointment ; unless by leave of Absence from the Governor, with advice and Consent of his Council ; which leave of Ab ence, shall not extend to more than Twelve Months, or be renewed by the Governor, but with the Approbation of the Council, at the Annual Session.

12th THAT Judges be appointed, to preside in the Courts of the Province ; to hold their places during Life, or their good Behaviour, and that they be rewarded with Sufficient Salaries, so as to confine them to the functions of administering Justice. That every Cause of Accusation for a Removal, proceeding from the Governor, shall follow the Rule laid down in the 9th Article. And every Cause of Accusation for a Removal, on the Part of the Public, shall proceed from the House of Assembly, and be heard by the Council ; which, if well founded, shall operate a Suspension ; and in either Case, be decided in Appeal and Report to Your Majesty.

13th THAT Appeals from the Courts of Justice in this Province to the Crown, be made to a Board of Council, or Court of Appeals, composed of the Right Honble The Lord Chancellor and the Judges of the Courts of Westminster Hall.

14th YOUR PETITIONERS beg leave, humbly to Represent to Your Majesty ; that from their Proximity to the United States, who from Situation and Climate, have many advantages over them, the Internal Regulations for promoting the Trade, Agriculture and Commerce, of this Province ; are now become more intricate and difficult ; and will require great Care and Attention, on the part of the Legislature here ; to watch over the Interests of this Country. They therefore request, that the Assembly may have the Power, of laying the Taxes and Duties, necessary for defraying the Expences of the

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Civil Government of the Province. And for that purpose, that the Laws now existing, laying Taxes and Duties to be levied in the Province, may be repealed.

SUCH MAY IT PLEASE YOUR MAJESTY are the Intreaties and Prayers of Your loyal Subjects; and in full Confidence they trust, that Your Majesty will releive them from the Anarchy and Confusion, which at present prevail, in the Laws and Courts of Justice of the Province, by which, their Real Property is rendered insecure, Trade is clogged, and that good Faith, which ought, and would subsist among the People, and which is the Life and Support of Commerce, is totally destroyed. And be Graciously pleased to Secure to them, a Constitution and Government, on such fixed, and liberal Principles, as may promote the desire Your Affectionate Subjects of this Province have, of rendering this Mutilated Colony, a bright Gem in the Imperial Crown of Great Britain. And that may call on the present Generation, for their unceasing Acknowledgements and Gratitude. And upon the future, to feel as the present, that the Security and Happiness of the People and Province of Quebec; depend on an Union with, and Submission to, the Crown and Government of Great Britain.

In these pleasing hopes Your Petitioners as in Duty bound will ever pray &c. &c. &c.

Quebec 24th November 1784

(Signed)

John Munro
John MacDonald
Alex^{r} ffraser
Andrew Doe
James Brymore
W^{m} Hemley
Joseph Musgrave
Robert Urquhart
Joohn Coops
W^{m} Miller
J. Stewart
Robert Sandeson
James Stiveinson
James Collum
John Bell
John Thomson
Rob^{t} Russel
William Russel
John Fraser
Pat^{k} Sulavan
George Harrow
John Henderson
Donald Smith
Robert Gorrie
James Currie
Ja^{s} Duncanson
Elias Salomon
Alex^{r} Spark
W^{m} Lindsay J^{r}
W^{m} Person
Luke Gambee
John Justus Diehl
John Urquhart
John Buchanan
W^{m} Thomas
John Chillas

John Crawford
John Johnston
Alex^{r} MacPherson
Alex^{r} Macpherson
John Macpherson
Andrew Martin
John Young
James Sherrar
Malcom Mullun
Patrick Codey
Louis Ratti
Jn^{o} Jones
Josep Mather
John Daly
Johann friedrih
Jacob Stugman
John King
John Gawler
John Hay
Lauch Smith
James M^{c}Neill
Ja^{s} Sinclair
Geo. Sinclair
James Swan
Zach^{y} MacAulay
Cuthbert Grant
Daniel Fraser
John Pagan
Meredith Wills
John Rodhe
Alex^{r} Johnston
John Johnston
Rob^{t} Haddan
John Ayton
John Lynd
Henry Crebassa

William Grant
George Jinkins
Will^{m} Webb
John Robinson
Ja^{s} Gibbons
John M^{c}Kutcheon
Jas Quin
John Saul
W^{m} Mackenzie
John Ross
Henry Cull
W^{m} Hay
Alex^{r} Wallace
Jeff^{ry} Manning
Jn^{o} Jones
Sam^{l} Casey
Tho^{s} Bennett
William Laing
Da Cameron
W^{m} Garrett
Godfrey King
Sam^{l} Jefferys
Dunccan Mkensy
John Simpson
John Potts
Stephen Curtis
Mathew Lymburner
David Barclay
Thomas Sketchley
A. Ferguson
William Macnider
Roderic Fraser
Tho^{s} Cary
Alex^{r} Ross
David Ross
J. Buchanan
Rob^{t} M^{c}fie
Will^{m} Ritchie
Thom^{s} Bissbrown
Robert Stewart
Matthew Stewert
Hyam Myers
Math^{w} Macnider
James Bowman
Charles Grant
Adam Lymburner
Rob^{t} Willcocks
John Antrobus
Jn^{o} Painter
John Jones
William Wilson
Al. Wilson
G. Stuart
Rich^{d} Dalton
Jacob Rowe
John Munro
Thomas M^{c}Cord
Thomas Powis
Robert Woolsey
Robert Keating
Hugh Jameson
Jn^{o} Blackwood Ju^{r}
W^{m} Burns
Fridrick Glackemeyer
Miles Prenties
C. J. Tanswell
Thomas Grahame
An^{s} Grant
Ja^{s} Grant
Ja^{s} Greig
Isaac Roberts
Anthony Vanfelson
W Roxburgh
Fred: Petry
Alex. Greig
P. Pollock
John M^{c}Cord Jun^{r}
Jas. Sinclair
James Woods
George Gillmore
Robert Ritchie
Hugh Ritchie
John Ritchie
Hugh Merchall
James Johnston
I. Fraser
John Buchanan
Robert Lester
W^{m} Lindsay
Constant Freeman
Ezekiel Freeman
John Walter
W^{m} Vonden Velden
Nath. Taylor
Jn^{o} Taylor
Edward O'Hara
David Shoolbred
Tho^{s} Watt
A. Aylwin
C. Danbridge
Jn^{o} Purss
Malcolm ffraser
William Bell
Wiliam Wilson
Ri a Grey
Samuel Harris
Andrew Colly
John Hay
William Carss
David Morris
Jams Gordon
John T Doyle
William Lane
William Crouch

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John McCord
John Lampard
Rendel McDoneld
Patrick Ledwith
Daniel Duncan
Hugh Rigby
John Reid
John Brook
Alexader annod
Richd Dunn
Moses Brockett
John Evans
John Richardson
Richard Janneyson
Francis Desrocher
W: Ward
Saml Henry
John Stanley
John Greig
William Moore
John Salmon
B. V. Clench
Jno Salmon
John Dormer
Hugh Fraser
Joseph Fraser
John Walsh
Alexr McDonald
Alexr Iver
Charles Daly Junr
W. Cameron
Edward Mackay
Cha Stewart
Isaac Gay

Wt Caw
Daniel Blunt
William Miller
John Fraser
John Rodolf Smith
Charles Smith
David Jacobs
Saml Pepper
James Galbraith
Wm Brown
Jas Melvin
John Woolsey
Robt Russel
W Courcy Gill
Philip Sullivan
Dunacan MDonald
James Davidson
Malcolm Fraser

Inhabitants of Three Rivers.
Aaron Hart
Sam Sills
William Nelson
Moses Hart
John Macpherson
John Fraser
Philip Lloyd
John Sills
Ezel Hart
R. Mell

I. M. Bliss
Robert Jones
Thomas Prendergast
James Day
Joseph Ray
George Rapper
John McBain

District of Montreal

Jacob Jordan
James McGill
James Finlay
Benjn Frobisher
Nicholas Bayard
William Kay
Alexr Henry
J. Blackwood
Geo: McBeath
Jno Askwith
William Allen
Joseph Frobisher
Hugh Ross
Ancus Cameron
Alexander Hay
Charles Paterson
Saml Birnie
James Dyer White
J. McKinnsy

Jacob Ruhn
Fran Winton
John Forsyth
John Franks
William Harkness
Wm Griffin
Rosseter Hoyle
Robert Griffin
Abraham Hart
Samuel Gerrard
Colin Hamilton
Laurence Taaffe
Wm Hy McNeill
Charles Smyth
Angus Macdonald
John Smith
Dd Lukin
James Cameron
G. Young

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Felix Graham
John Gregory
J. Grant
David M^{c}Crae
John Lilly
Geo. Selby
W. Maitland
James Caldwell
R. Sym
Robert Jones
William Taylor
F. Bleakley
Jn^{o} Bell
Alexander Campbell
I. R. Symes
Rob^{t} M^{c}Grigor
James Laing
R. Gruet
David Davis
John Russel
Thomas Sullivan
Rich^{d} Dowie
(Oliver Church Late
Lieu^{t} 2^{d} BKRR
New York)
(John Dusenberg Ens^{n}
Late Loyal Rangers)
samuel Burch
Levai Michaels
Henry J. Jessup
Isaac H^{t} Abrams
Isaac Hall
John Campbell
Donald Fisher
Jos. Forsyth
(H. Spencer Lieu^{t} late 2^{d}
BK.R.R. N. York)
Rich^{d} Pollard
John Grant
John M^{c}Kindlay
W^{m} Packer
John M^{c}Gill
Fra^{s} Badgley
Peter Pond
Tho^{s} Burn
Dav^{d} Alex^{r} Grant
Alex^{r} Cooper
Rich^{d} McNeall
Alex^{r} Fraser
Thomas Frobisher
John Ogilvy
Andrew Todd
Thomas Corry
Wal^{r} Mason
Gor. Moore
R. J. Wilkinson
James Noel

R. Cruickshank
John Rowand
E. Edwards
Thomas Forsyth
D. Sutherland
James Grant
Allan Paterson
John Ross
Levy Solomons
Levy Solomon Jun^{r}
John Turner & Sons
Uriah Judah
Ch^{r}: Cramer
Alex^{r} Henry
Adam scott
Alex^{r} Mabbut
Jonas schindler
William Hunter
Alex^{r} Walmsley
Henry Edge
Allex^{r} Martin
James M^{c}Nabb
James Ruott
Thomas M^{c}Murray
Isaac Judah
Sam^{l} Judah
Laurence Costille
Saint Louis
Henry Campbell
John Bethune
Nom^{d} MacLeod
James Mackenzie
W^{m} Murray
James Finlay Jun^{r}
J. Symington
J. Pangman
John Tobias Deluc
Cuthbert Grant
Robert Grant
Tho^{s} Nadenhuvet
James Foulis
William Bruce
John Macnamara
Daniel Sullivan
Finlay Fisher
John Stewart
Daniel Mackenzie
Joseph Anderson
Paul Heck
Robert Thomson
Samuel Heck
Alex^{r} Milmine
Robert Smith
William Smith
Jacob Tyler
Char^{s} Grimesly
W^{m} Grimesly

Charles Lilly
Duncan Fisher
John Ridley
Alex^{r} Campbell
John Milroy
Joseph Hamly
Sam^{l} White
Sam^{l} Douney
C. Rolffs
W^{m} Hall
Geo. M^{c}Dougall
Robert Lindsay
Ja^{s} Robertson
Tho^{s} Brekenridge
John Foulis
Francis Crooks
Geo. Edw. Young
George Aird
Joseph Provan
Simon M^{c}Tavish
John Lawrence
Sam^{l} Embury
S. Anderson
Dan^{l} Daly
Rich^{d} Whitehorse
James Fraser
Alexander fraser
Rich^{d} Whitehouse
Levi Willard
Joseph Johnson
M. Cuthell
James Leaver
Tobias Burke
Rob^{t} M^{c}Ginnis
Rich^{d} M^{c}Ginnis
John Hicks
George Hicks
Stephen Milers
William Tilby
James Perry
Edward Corry
Stephen Waddin
Peter Smith
Owen Bowen
Peter Grant
Jm^{s} Chaorles
James Fairbairn
John Hughes
Ranald M^{c}Donald
Watkin Richard
jenbaptiste Lafrenay
Thomas Sare
And^{w} Cockburn
Tho^{s} Isbusther
Joseph Landrey
Robert Withers

David Ross
Abram Holmes
William Fraser
William Hassall
David Ray
Thomas Busby Sen^{r}
Thomas Busby Jun^{r}
William England
Conrad Marsteller
William Creighton
Hugh Holmes
Jervis George Turner
R^{d} Warffe
James Nelson
Philip Cambell
Duncan Cumins
Henry Gonnerman
Firedrick Gonnerman
John Maxwell
Tho^{s} Little
Christ^{r} Long
Edward Gross
Nicholas Stoneman
Jn^{o} Daly
Tho^{s} Oakes
John Grant
Will^{m} Wintrope
Joel Andras
Thomas Fraser
Jn^{o} Lumsden
William Holmes
Nicholas Montour
Patrick Small
David Rankin
(Richard Duncan
late Cap^{n} Roy^{l} Yorkers)
Dunc^{n} Cameron
And^{w} Wilson
Donald M^{c}Donell
Angus M^{c}Donald
Ed. Umfreville
John Lockhart Wiseman

(Parchment copy)

endorsed: In L^{t} Gov^{r} Hamilton's N^{o} 2 of 9. Jan^{y} 1785

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PLAN FOR A HOUSE OF ASSEMBLY.[1]

We conceive that the House of Assembly ought for the present, to consist of a Number not exceeding 70 Representatives, who ought all to profess the Christian Religion, And Speak and write the English or french languages.

That, to procure that Number, the City of Quebec (being the Capital) and Parish, and the City of Montreal and Parish, between them, elect 13. Members. The City of three Rivers 2. Members. And as there are in the province 120 parishes, that they be divided into counties and districts according to the Number of Inhabitants, in such manner as each County or district may elect two or four Members.

When this plan was made out in fall 1784, the loyalists had not begun their new Settlements. As these new Settlements have been divided, and erected into five new districts,[2] it may be proper that each district send a certain number of Representatives, And that the two districts of Quebec and Montreal, containing the old settled part of the Country, be divided into a certain number of districts (for the purpose of electing Representatives only) to choose Members for the house of Assembly.

That the Legislature have the power, on application to them, to erect such parishes as may in future be settled, into Counties or districts, to elect & Send Members to the Assembly, as the province increases in population.

That the qualification necessary to have a Vote at the Election of the representatives for the Cities shall be, a House, Shed or lot of Ground of the Value of forty Pounds Sterling ; And, for the Counties or districts, a real Estate, Estate of Inheritance or *Terre en roture*, of at least, one and a half Acres in front by 20 Acres in Depth, or other Estate of higher denomination, And of which the Voter shall have the absolute property ; lying within the district or County, or City and parish he votes for.

That the qualification necessary for a person offering himself to serve as a representative shall be a real Estate of Inheritance or descent in Lands or Houses of the Value of thirty Pounds Sterling yearly Rent.—

That every person shall prove by Oath, (under the pains and penalties of perjury) his qualification to either Vote or represent, being of the age of twenty one years, And be absolute proprietor of the qualification.

That none but Males shall either Vote or represent.

That the Assembly have free liberty of debate, And the power of chusing a speaker.

That all laws relating to taxation or raising monies on the Subject, originate in the House of Assembly.

That the Assembly have the sole right to try and decide in all contested Elections.

That all affairs be carryed in the Assembly by a Majority of Votes.

That at every Meeting of the Assembly, the Speaker, And, at least one half of the representatives be necessary to form a house.—

[1] Canadian Archives, Q 42,p.127. In his letter of July 24th, 1789, to the Hon. W. W. Grenville, Adam Lymburner, who was then in London as the agent of the subscribers to the petition of Nov. 24th, 1784, states,—" The Committee of Quebec and Montreal in the autumn 1784 apprehending there might be some difficulty about these matters in this Country—drew up a short sketch of a plan for a House of Assembly of which I have the Honour of inclosing a Copy." Q 43,p.777. The plan however does not accompany the letter but is found in vol. Q 42, as indicated. Concerning the committees mentioned we find the following in Smith's History, "To prevent, in some measure, the pernicious effects of false reports on the objects of Reform, and for the information of the public in general, committees were named and appointed to carry forward and support the petitions, and they were printed and distributed in the French language, all over the Province." History of Canada, &c., p.166.

[2] This marginal note was evidently added by Lymburner. The new Districts referred to were created by the Patent of July 24th, 1788, establishing and defining the Districts of Luneburg, Mecklenburg, Nassau and Hesse. See Q 39, p. 122.

That the Governor or Lieutenant Governor for the time being, shall be obliged to call together the representatives in assembly, once every year, between the first of January and the first of May of every year, And, at any other time the Urgency of Affairs may require.—

Endorsed: Plan for a House of Assembly drawn up by the Committee's of Quebec and Montreal, in November 1784.

In Mr. Lymburner's 24th July 1789

OBJECTIONS TO THE PETITION OF NOV. 1784.[1]

Objections

Aux Demandes Faites,

À Notre Auguste Souverain;

Par l'Adresse lue dans une Assemblée tenue chez les R. R. P. P. Recolets, le 30 Novembre 1784.

Demandé au Prologue. Que, considerant le fardeau de la Grande-Bretagne, il nous soit accordé une Chambre d'Assemblée, pour imposer des Taxes, &c.

Rèpondu. Que c'est avec douleur certainement, que nous devons regarder le fardeau de notre Mere Patrie: mais hélas! ce ne peut être qu'une douleur infructueuse: car, quel reméde y pouvons-nous apporter? Nous, dont les besoins renaissent chaque jour; nous, qui, chaque année nous dépouillons jusqu'au dernier sol, pour payer les effets, (déjà consommés) qu'est obligée de nous fournir cette Mere Patrie; Nous, qui malgré les sommes énormes, que la guerre a occasionné de laisser en ce pays, sommes encore en arriere avec la Métropole, d'une balance de comptes considérable. Quelles sont donc nos ressources pour appuyer des Taxes? Sera-ce sur les Villes? Qui ne connoît pas l'indigence de leurs Citoyens. Sera-ce sur les Terres? Qui ne sçait pas, que les Campagnes endetées envers les Villes, n'ont pu jusqu'à présent se liquider; que la misere est le partage d'une trés-grande partie de leurs Habitants. Que sera-ce donc, lors qu'une partie de leurs travaux sera consacrée pour le soutien de l'Etat?

Cet exposé, vrai dans tous ses points, doit convaincre, qu'une Chambre d'Assemblée, pour imposer des Taxes, est, non-seulement inutile, mais encore, prejudiciable aux intérêts de cette Colonie.

Art. I. Demandè. Que la Chambre soit indistinctement composée, d'anciens & nouveaux Sujets, &c.

Répondu. Cet article demande une plus grande extention: car, par ce mot indistinctement, il pourra y avoir autant, & même plus d'anciens que de nouveaux Sujets dan la Chambre; ce qui seroit contraire au droit naturel, puisqu'il y a vingt Canadiens contre un ancien Sujet. Que deviendront nos droits confiés à des Etrangers à nos Loix.

Art. II. Demandè. Que le Conseil soit composé de trente Membres, sans appointements, &c.

Répondu. Que cela sera bon, s'il se trouve assez de riches désintéressés pour prendre le parti du Peuple, l'honnête indigent étant dans l'incapacité de donner son temps pour rien.

Art. III. Demandè. Que les Loix Criminelles d'Angleterre soient continuées, &c.

Répondu. Que la douceur de ces Loix doivent en faire désirer la continuation; mais demande inutile, puisque nous les avons.

[1] Canadian Archives, Q 40, p. 199. This reply to the petition of Nov. 24th, 1784, was sent, together with other papers, in a despatch from Dorchester to Sydney, dated Jan. 10th, 1789. As the certificate appended to it indicates, it was drawn up and printed in Dec. 1784.

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ART. IV. Demandé. Que les Loix, Coutumes & Usages de ce Pays soient continuées ; sujettes néanmoins, aux altérations que la Législation trovera nécessaire, &c.

Repondu. Cet article est contradictoire ; en se qu'il constate nos Droits, & les détruits entiérement. En effet, n'est ce pas les détruires, que de les soumettre aux altérations que la Législation trouvera nécessaire d'y faire? Ne deviendront-ils pas arbitraires? Que pourra-t-on statuer sur des Droits aussi changeants, que les Chambres auxquelles ils seront soumis?

ART. V. Demandé. Que les Loix de Commerce d'Angleterre soient déclarées celles de cette Province, sujettes aux mêmes altérations que l'article 4me. &c.

Répondu. Que la réponse à l'article 4me. est la même pour celui-ci.

ART. VI. Demandé. Que l'Acte d'*Abeas Corpus* soit en force, &c.

Répondu. Que notre Auguste Souverain nous l'ayant accordé,[1] il est inutile de l'importuner pour cet objet.

ART. VII. Demandé. Que dans les Cours de Jurisdiction, il soit accordé des Jurés à la demande des Parties.

Répondu. Que cet article est entiérement en faveur du Riche, contre le Pauvre. Si ce sont des Jurés ordinaires ; Pauvres que deviendront vos familles, lorsqu'il vous faudra laisser vos travaux, une partie de l'année, pour aller décider des Causes qui ne vous regardent en rien? Vous vous plaignez déjà d'être obligés de les interrompre, lorsque vous êtes appellés pour les Affaires Criminelles, ce qui arrive six fois l'année. Que sera-ce donc, lorsque vous serez obligés d'assister à toutes les Audiences? Quelqu'un dira peut-être que cela se fait à Londres, qu'en conséquence on le peut faire dans ce pays. Que ce quelqu'un compare le nombre de citoyens de Londres, se montant à trois cens mille hommes. environ, avec douze cens tout au plus que vous êtes dans cette Ville & ses Faux-bourgs. Pour lors il verra que vous serez obligés de vous trouver 250 fois à l'Audience, contre une fois que se trouve le Citoyen de Londres. Jugez par là si vous avez d'autre métier à faire & que deviendront vos familles.

Si ce sont des Jurés spéciaux, (en conséquence payés) quel est le pauvre qui pourra lutter contre un riche oppresseur, détenteur de son bien ; qui, pour l'écraser, demandera des Jurés (qu'on ne pourra lui refuser) ne sera-ce pas mettre le pauvre dans l'alternative d'abandonner sa cause, ou se voir totalement ruiner, s'il vient à succomber. On se plaint des frais qu'entraîne la Justice. Qui pourra y suffire lorsqu'il faudra y joindre la paye de douze Jurés? n'est-ce pas fermer la porte du Sanctuaire de la Justice à l'indigent.

ART. VIII. Demandé. Que les Cheriffs soient élus par la Chambre, aprouvés & commissionnés par le Gouverneur, &c.

Répondu. Que si le Cheriff nommé par la Chambre ne convient pas au Gouverneur, qui deviendra l'administration des Loix & de la Justice? De là ne s'ensuivra-t-il a par un temps d'anarchie, préjudiciable aux intérets publics.

ART. IX. Demandé. Que nul Officier civil ne pourra être suspendu de sa charge, par le Gouverneur, sans le consentement du Conseil, &c.

ART. X. Demandé. Qu'aucune nouvelle Charge civile soit créée par le Gouverneur, sans le consentement du Conseil, &c.

ART. XI. Demandé. Que les Emplois de confiance soient exercés par les Personnes mêmes, &c.

Répondu. Que les trois articles précédents seroient admissibles en temps & lieu.

ART. XII. Demandé. Qu'il soit nommé des Juges dans les Cours de la Province, qu'ils ayent des appointements fixes & suffisants, &c.

Répondu. Qu'il est juste d'avoir des Juges pour administrer la Justice, qu'ils aient des appointements suffisants pour vivre convenablement à leur état. Car, sans cela, ou ils négligeront les devoirs de leur Charge, pour s'occuper de soins qui puissent les mettre plus à leur aise, ou ils mettront la Justice à l'enchere.

[1] Referring to the Ordinance of 24 Geo. III., cap. 1. See note 1, p. 501.

Art. XIII. Demandé. Que les appels des Cours de Justice de cette Province soient faits au Lord Chancellier, à la Cour de Westminster Hall.

Repondu. Que nous avons eu jusqu' à présent recours au Roi & à son Conseil, qui prenoit nos Loix pour guides de leur décision. Mais que deviendront tous nos Droits rapportés dans une Chambre qui ne s'écarte en rien des Loix & Constitutions Britanniques? Hors, si le Conseil de la Province change vos Loix, & y substitue celles d'Angleterre, dans quelle confusion & embarras ne nous mettra-t-il pas? Si au contraire il les laisse subsister, quel moyen d'appel aurons-nous dans une Chambre qui y fait une entiere abstraction.

Art. XIV. Demandé. Qu'il Plaise à Sa Majesté, pour le bien du Commerce & faire fleurir l'Agriculture, revêtir la Chambre d'Assemblée du pouvoir d'imposer des Taxes, &c.

Repondu. Que cet article, mûrement consideré, pourroit donner matiere à bien des réflexions. Car, qu'y a-t-il de commun entre nos demandes & cette proximité, ce climat, cette situation des Etats-Unis, qui leur donne l'avantage du Commerce sur nous? Sera-ce par le moyen des Taxes qu'on prolongera notre été de trois mois, qu'on rendra notre Fleuve navigable toute l'année? non: donc, l'avantage restera toujours chez nos voisins. Sera-ce les Taxes qui feront fleurir notre Agriculture? non: puisque les Seigneurs, pour l'encourager, donnent des Terres pour trois ans sans aucune redevance, & qu'elles restent incultes faute de moyens pour les ouvrir.

Qu'est-ce donc qui peut compenser leur avantage sur nous? C'est le repos dont nos campagnes ont jouis jusqu' à présent; exemptes de Taxes, elles ont vus, malgré l'appreté du climat, le fruit de leurs travaux, & en ont jouis. A cela on répond que les campagnes ont été molestées par le logement des Troupes & les corvées, il est vrai; mais les Taxes qu'on leur imposera les extempteront-ils de cela. Voyons-le.

Lorsque le Roi jugera nécessaires d'envoyer des Troupes dans cette Colonie pour la sûreté de nos propriétés. Quelqu'un s'y opposera-t-il? Non c'est un droit que le Roi a dans tous ses Etats, sans même être obligé d'en rendre compte. Avons-nous des Cazernes en état de loger ces Troupes? non: peuvent-elles être toute l'année sous des tentes? non; donc, nous ferons des Cazernes où nous les logerons.

Les Troupes menent avec elles un train considérable de munitions, vivres, &c. Qui transportera ces effets à leurs destinations? des gens de bonne volonté, dit-on, qu'on payera bien. Vous aurez des gens de bonne volonté, il est vrai, mais à des prix si exhorbitants, que la Province ne pourra pas suffire à cette seule branche de dépense. Les taxera-t-on? il n'y en aura plus. Donc, pour ne pas arrêter des travaux aussi indispensables, on sera obligé de commander; en conséquence nous ferons des Corvées.

Quelqu'un dira, peut-être, comme il a déjà été dit, qu'on prendra, ce qu'on appelle Volontaires dans les campagnes. Voilà donc une classe d'hommes *Libres* condamnés à l'*Esclavage*. N'est-ce pas assez que la fortune leur soit ingrate, sans encore aggraver leur malheur par la servitude. Cela étant inadmissible, tout bien consideré, mûrement examiné; il faut conclurre que les Taxes ne pourront pas nous exempter, ni du logement des Troupes, ni des corvées: qu'en conséquence la Chambre, pour les imposer, est contraire aux intérêts de cette Colonie indigente.

FIN.

Je certifie que dans le courant du mois de Décembre de l'année 1784 j'ai imprimé aux environ de Deux cens exemplaires des Objections ci-dessus & environ le même nombre d'une Adresse à Sa Majesté, en Opposition à la Chambre d'Assemblée (dans le même espace de temps) Montréal 29 Xbre 1788.

fl. Mesplet
imprimeur

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

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(Translation)

OBJECTIONS

TO THE REQUESTS MADE

TO OUR AUGUST SOVEREIGN ;

In the Address read at an Assembly held at the house of the R.R.P.P. Recolets, the 30th of November 1784.

Requested in the Prologue. *That*, considering the burden of Great Britain, a House of Assembly should be granted us, to impose Taxes, &c.

Replied. That we ought certainly to view with sorrow the burden of our Mother Country ; but alas ! it can only be a fruitless sorrow, for what remedy can we offer ? We, whose wants increase day by day ; we, who, every year despoil ourselves of our last farthing to pay for the supplies, which this Mother Country is compelled to furnish us, and which are already exhausted ; we, who in spite of the enormous sums, which in consequence of the war have been left in this country, are still in arrears with the parent state, for the balance of a considerable sum. What then are the resources on which taxes could be levied ? Is it on the Towns ? Who does not know the poverty of their Citizens. Is it on the Lands ? Who does not know that the rural districts are in debt to the Towns, and have at present nothing with which to liquidate ; that misery is the lot of a very large portion of their Inhabitants ? What will be the result then, if a portion of their labours must be applied to the support of the State ?

This representation, which is true in every point, ought to be convincing evidence that a House of Assembly for the imposition of Taxes is not only useless, but would be prejudicial to the interests of this Colony.

Art. I. Requested. That the Chamber be indifferently composed of the ancient and new Subjects, &c.

Replied. This article requires more explanation : for, from this word *indifferently*, there might be as many and even more ancient than new Subjects in the House, which would be contrary to natural right, as there are twenty Canadians to one ancient Subject. What would become of our rights if they were entrusted to Strangers to our Laws.

Art. II. Requested. That the Council be composed of thirty members without salaries, &c.

Replied. This might be satisfactory if there were enough disinterested rich men to take the part of the people, the honest poor man being unable to give his time for nothing.

Art. III. Requested. That the Criminal Laws of England be continued here.

Replied. That the leniency of these laws would make their continuation desirable ; but the demand is unnecessary, since they are in force.

Art. IV. Requested. That the Laws, Usages and Customs of this Country be continued ; subject nevertheless, to those changes that the Legislation may find necessary, &c.

Replied. This article is contradictory ; in that it affirms our Rights, and completely destroys them. For as a matter of fact, is it not destroying them to subject them to any alterations which the Legislation may find it necessary to make ? Would they not become arbitrary ? What statutes could be based on Rights as changeable as the House to which they will be submitted ?

Art. V. Requested. That the Commercial Laws of England be declared those of this Province, subject to the same alterations as in Article IV. &c.

Replied. That the reply to article IV will serve for this article.

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Art. VI. Requested. That the Act of *Habeas Corpus* shall be in force, &c.

Replied. That our August Sovereign having granted it to us, it is unnecessary to trouble him further concerning it.

Art. VII. Requested. That in the Courts of Jurisdiction, Juries may be granted at the request of the Parties concerned.

Replied. That this article is entirely in favour of the Rich against the Poor. If they are the ordinary Juries; Ye poor men, what will become of your families when you are forced to leave your work, for a part of the year, to go and decide causes which in no way concern you? You already complain at being compelled to interrupt your work when you are summoned for Criminal Affairs, which occurs six times in the year. What would be the result if you were obliged to take part in every sitting? Some one perhaps will say that this is done in London, and it can therefore be done in this country. But let such a one compare the number of citizens in London, amounting to about three hundred thousand men, with twelve hundred which, at the most, is all that you are in this town and its suburbs. He will then see that you would be obliged to be present at the sittings, two hundred and fifty times for every time that a citizen of London need appear. Judge from this if you have any other trade to carry on, what would become of your families.

If the Juries are special ones (and in consequence remunerated) what poor man is there who could contend against a rich oppressor who has unjustly seized his property; and who, to crush him, may demand a Jury (which could not be refused him) would not this force the poor man to the alternative of giving up his cause, or of being totally ruined if he loses. Complaints are now being made of the expense which Justice entails. Who will be able to afford it, when the payment of twelve Jurors is to be added? Would not this close the door of the Sanctuary of Justice to the poor.

Art. VIII. Requested. That the Sheriffs shall be elected by the House, approved and commissioned by the Governor, &c.

Replied. That if the Sheriff nominated by the House does not please the Governor, what will become of the administration of the Laws of Justice? Will not a time of anarchy in consequence ensue, prejudicial to the public interests.

Art. IX. Requested. That no civil Officer shall be suspended from his office by the Governor without the consent of the Council, &c.

Art. X. Requested. That no new civil Office shall be created by the Governor without the consent of the Council, &c.

Art. XI. Requested. That all positions of trust shall be filled by the Persons themselves, &c.

Replied. That the three preceding articles would be admissible time and place considered.

Art. XII. Requested. That Judges shall be appointed for the Courts of the Province, and that they shall have fixed and sufficient stipends.

Replied. That it is right to have Judges to administer Justice, and that they ought to have stipends sufficient to live suitably to their station. For, without that, they will either neglect the duties of their office, to occupy themselves with the care of their own interests, or they will put Justice up to auction.

Art. XIII. Requested. That appeals from the Courts of Justice of this Province be made to the Lord Chancellor, at the Court of Westminster Hall.

Replied. That up to the present time we have made appeals to the King and his Council, who have taken our Laws as the guide of their decisions. But what will become of our Rights when brought before a Court which will deviate in nothing from the British Laws & Constitution? And further if the Council of the Province changes your laws, and replaces them by the laws of England, in what confusion and difficulty shall we not be placed?

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If, on the contrary, they are allowed to remain in force what means of Appeal shall we have in a Court which entirely ignores them.

Art. XIV. Requested. That it may Please His Majesty in the interests of Commerce, and for the encouragement of Agriculture to invest the House of Assembly with power to impose Taxes, &c.

Replied. That this article duly considered would give rise to many reflections. For what community is there between our requirements & the proximity, the climate, and the situation of the United States which give them the advantage in Trade over us? Would the imposition of Taxes add three months to our summer, and make our river navigable for the whole year? No: then the advantage would still be on our neighbours' side. Would Taxes make our Agriculture flourish? No: for the Seigniors to encourage Agriculture give the lands for three years, exempt from all dues, and the lands often lie uncultivated for lack of means to work them.

What is it then that compensates for the advantages they possess over us? It is the peace that our rural districts have hitherto enjoyed; free from Taxation, and in spite of the severity of the climate, they have seen the fruit of their labours, and have enjoyed it. To this it may be urged that the rural districts are harassed by the billeting of Troops and by corvées. This is true, but would the imposition of Taxes exempt them from this burden. Let us see.

When the King considers it necessary to send Troops into this Colony for the safety of our possessions, would any one oppose it? No, this is a right which the King possesses in all his Dominions, without even being obliged to give account of his action. Have we Barracks in a condition for housing these Troops? No: can they live the whole year under canvas? no; then we must either construct Barracks, or lodge them.

Troops bring with them a considerable amount of ammunition, provisions, &c. Who is to transport these goods to their destination? willing men, it will be said, who will be well paid. You can get willing men, it is true, but at a rate so exorbitant that the Province would not have enough to pay for this one branch of defence. If you impose taxes upon them, you will no longer find them. So then, not to put a stop to works so indispensable, it will be necessary to commandeer; and in consequence we must have recourse to Corvées.

But someone will perhaps say as has already been said, that what are called Volunteers will be raised in the country. Here then would be a band of *Freemen* condemned to *Slavery*. Is it not enough for fortune to have treated them so unkindly, without increasing their misery by slavery. This being inadmissible, taking everything into consideration, it appears conclusive after mature deliberation that Taxation cannot exempt us from the billeting of Troops, or from corvées; and that consequently an Assembly for the imposing of Taxes would be contrary to the interests of this impoverished Colony.

End.

I certify that during the Course of the month of December of the year 1784, I have printed about two hundred copies of the Objections and about the same number of an Address to His Majesty in opposition to the House of Assembly, (in the same space of time) Montreal 29th December 1788.

fl. Mesplet

printer.

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ADDRESS OF ROMAN CATHOLIC CITIZENS TO THE KING.[1]

(Copie)

LA TRÈS HUMBLE ADDRESSE DES CITOYENS ET HABITANS CATHOLIQUES ROMAINS DE DIFFERENTS ETATS DANS LE PROVINCE DE QUEBEC, EN CANADA.

Au Roi.

Sire,

Les Bontés dont Votre Cœur Royal et Généruex a pris plaisir à combler Vos fideles et loyaux Sujets Canadiens, les Démarches actuelles et prematurées de Vos Anciens Sujets residents dans notre Province, et le petit Nombre de Nouveaux qui se sont joint à eux, nous font esperér que Votre Très Gracieux Majesté nous permettra de nous prosterner derechef au Pied de son Trône, pour implorer Sa Bienfaisance et Sa Justice.

Dans les Addresses que nous avons pris la Liberté de faire passer à Votre Majesté Deux Objets ont eu l'Unanimité de nos Con-citoyens ; la Religion de nos Pères etoit pour Vos Nouveaux Sujets, comme pour tous les Peuples du Monde, le Point essentiel de nos Demandes. Animés de cette Confiance, que la Générosité de notre Souverain nous inspiroit, nous espérions, et nous espérons encore, que Votre Majesté nous accordera les Moyens nécessaires pour la perpétuer dans notre Colonie : Nous avons, Très Gracieux Souverain, un Besoin urgent de Prêtres pour remplir les Seminaires et Missions de notre Province ; des Régents et des Professeurs de cette Classe, et de toute autre, nous manquent : Nos Collèges sont deserts ; de ce Defaut provient l'Ignorance, et de-là la Depravation des Mœurs. C'est un Peuple soumis, un Peuple fidele, qui attend de Votre Clémence Royale La Liberté de tirer de l'Europe des Personnes de cet Etât.

Le second Objet, Très Gracieux Souverain, étoit, que sous quelque Forme de Gouvernement qu'il plairoit à Votre Majesté établir en cette Province, Vos Sujets Canadiens Catholique jouissent indistinctement de tous les Priviléges, Immunités, et Prerogatives dont les Sujets Britanniques jouissent dans toutes les Parties du Globe soumises à Votre Empire. De ce second Objet S'ensuivoit notre Desir le plus ardent de Voir dans le Conseil Legislatif de notre Province un plus grand Nombre de vos nouveaux Sujets Catholiques, proportionnement à celui qu'ils composent ; de Personnes expertes dans nous Coûtumes, qui devant naturellement mieux connoître nos Loix municipales, nous en feroient plus efficacement ressentir les Avantages suivant les Intentions Royales de votre Majesté, qui nous les à Octroyé.

Une Colonie naissante, un Peuple très-imparfaitement instruit des Loix et constitutions Britanniques, ne croit pas devoir inconsiderément demander des Loix et Coûtumes à lui inconnues ; il doit, au contraire, et telle et l'Opinion de Vos Suppliants, S'en rapporter entierement à la Bienveillance de Son Auguste Souverain, qui fait mieux le Gouvernement qui convient à ses Sujets, et les Moyens les plus propres à les rendre heureux.

Qu'il nous soit permis seulement d'assurer Votre Majesté que nous ne participons en aucune Manière aux Demandes de Vos Anciens Sujets, conjointement avec quelque Nouveaux,[2] dont le Nombre, en Egard à celui qui compose notre Province, ne peut avoir beaucoup d'Influence.

Que la Majeure Partie des principaux Propriétaires de notre Colonie n'a point été consultée.

[1] Canadian Archives, Q 62A—1, p. 297. No names are appended to this petition and it is without date, but it evidently belongs to this period, and is doubtless the one referred to in the printer's note at the end of the preceding document, as being issued along with it.

[2] Referring to the petition of Nov. 24th, 1784. See p. 502.

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Qu'il Vous plaise, Très Gracieux Souverain, considerer que la Chambre d'Assemblée n'est point le Voeu unanime, ne le Desir général de Votre Peuple Canadien, qui par sa Pauvreté, et les Calamités d'une Guerre recente, dont cette Colonie a été le Theâtre, est hors d'Etât de supporter les Taxes qui en doivent nécessairement resulter; et qu'à bien des égards leur Petition paroit contraire et inconsistante avec le Bonheur de Nouveaux Sujets Catholiques de Vôtre Majesté.

C'est pourquoi, Très Gracieux Souverain, nous Vous supplions, qu'en Consideration de la Fidelité et Loyauté de Vos Sujets Canadiens, dont leur ancien Gouverneur, Sir Guy Carleton, a eclairé la Conduite dans les Circonstances les plus critiques, il soit permis à nos Evêques Diocesains de tirer d'Europe les Secours Spirituels; qui nous sont si indispensablement nécessaires, que le libre Exercise de notre Religion sont continué dans toute son Etendue, sans aucune Restriction, que nos Loix Municipales et Civiles nous soient conservées dans leurs Entier; et ces deux Points, avec les mêmes Prérogatives[1] dont nos Pères et nous jouissions avant la conquête de ce Pays par les Armes Victorieuses de Votre Majesté; que Vos nouveaux sujets Catholiques, qui forment les Dixneuf-Vingtieme de cette Province ayent à l'avenir, en Proportion de cette Nombre, une plus grande Part à la Distribution de Vos Faveurs Royales. Et que dans le Cas que Votre Auguste Volonté fût d'acquiescer aux Demandes de Vos Anciens Sujets conjointment avec quelques nouveaux, il vous plaise surseoir Votre Decision Royale jusqu' a ce que tous les Corps et Etâts qui composent notre Colonie ayent été généralement et légalement convoqués, ce que la Saison trop avancée nous empêche de faire en ce Moment; afin que par ce Moyen le Voeu unanime de notre Nation puisse étre transmis à Vôtre Majesté.

C'est que Vos fideles et loyaux Sujets Canadiens, fondés sur Droit Naturel, et plus encore sur Vos Bontés Paternelles, espérent humblement obtenir de leur Très Gracieux Souverain: Ils ne cesseront de prier pour la Conservation de Sa Personne Sacrée, pour son Auguste Famille, et la Prosperité de ses Royaumes. Tels sont les sentiments qui les font souscrire avec le profond Respect.

Sire
De Votre Majesté
Les tres-humble,
trés-obeissants Fideles
et loyaux Sujets.

(*Translation.*[2])

(Copy)

THE VERY HUMBLE ADDRESS OF THE ROMAN CATHOLIC CITIZENS AND INHABITANTS OF DIFFERENT CONDITIONS IN THE PROVINCE OF QUEBEC IN CANADA.

TO THE KING.

Sire,

The Favours which it has pleased Your Royal and Generous Heart to heap upon Your faithful and loyal Canadian Subjects, the present illconsidered Measures of Your Ancient Subjects resident in our Province, and the small Number of New Subjects who have joined them, make us hope that Your Most Gracious Majesty will allow us to kneel down at the Foot of your Throne to implore Your Benevolence and Your Justice.

In the Addresses which we have taken the Liberty of transmitting to Your Majesty, Two points have the unanimous Consent of our Fellow-citizens. The Religion of our Forefathers was for Your new Subjects, as to every People in the World, the

[1] This and other expressions in the document would indicate that this petition was presented by the oblesse and the higher clergy.
[2] Canadian Archives, Q 62A—1, p. 302.

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essential Point of our Petitions. Animated by that Confidence with which the Generosity of our Sovereign inspired us, we hoped, and still hope that Your Majesty will grant us the necessary Means for perpetuating it in our Colony. We are, Most Gracious Sovereign, in most urgent need of Priests to carry on the work of the Seminaries and Missions of our Province; Directors and Professors of this Class, and indeed of any other are lacking. Our Colleges are deserted; from this want arises Ignorance, and from Ignorance Moral Depravity. Submissive and loyal, this People hope to receive from Your Royal Clemency, Permission to bring from Europe, Persons of this Class.

The second Object, Most Gracious Sovereign, was that under whatever Form of Government might seem best to Your Majesty to establish in this Province, Your Catholic Canadian Subjects, without distinction, might enjoy all the Privileges, Immunities, and Prerogatives, enjoyed by British Subjects in all those Parts of the Globe, which are under Your Sway.

From this second Object follows our most earnest Desire to see in the Legislative Council of our Province a larger Number of Your New Catholic Subjects in proportion to their numbers; Persons experienced in our Customs, who being naturally better acquainted with our Municipal Laws, would more effectually impress on us the Advantages resulting from the Royal Instructions of Your Majesty, who has granted them to us.

An Infant Colony, a People very imperfectly acquainted with the British Laws and Constitution does not feel that it ought, without due consideration, to ask for Laws and Customs as yet unknown to it; it ought, on the contrary, and such is the opinion of Your Petitioners, to cast itself entirely on the Goodness of its August Sovereign, who can best form the Government which is most suited to his Subjects, and employ the Measures most fitted to render them happy.

May we be allowed to assure Your Majesty, that we in no wise concur in the Petitions of Your Ancient Subjects, conjointly with some New Ones, whose Number compared with the total number comprised in our Province, can exercise but little Influence.

That the Greater Number of the principal Proprietors of our Colony have not been consulted.

May it please You, Most Gracious Sovereign, to consider, that the House of Assembly is not the unanimous Wish, nor the general Desire of Your Canadian People, who through Poverty and the Misfortunes of a recent War, of which this Colony has been the Theatre, are not in a Condition to bear the Taxes which must necessarily ensue, and that in many respects to Petition for it appears contrary to, and inconsistent with the wellbeing of the New Catholic Subjects of Your Majesty.

For this reason, Most Gracious Sovereign, we entreat You that in Consideration of the Fidelity and Loyalty of Your Canadian Subjects, to whose Behaviour in the most critical Circumstances, their former Governour Sir Guy Carleton has testified, our Diocesan Bishops may be allowed to bring over from Europe the Spiritual Help, which is so indispensably necessary for us, that the free Exercise of our Religion may be continued to us to the fullest Extent, without any Restriction, that our Municipal and Civil Laws may be preserved in their Entirety, and that with these two Points may be granted the same Privileges enjoyed by our Forefathers and ourselves, before the Conquest of this Country by the victorious Arms of Your Majesty; that Your new Catholic Subjects, who form nineteen twentieths of this Province, may in the future, proportionately to their Number, have a larger Share in the Distribution of Your Royal Favours. And that, in Case it should be Your Royal Will to agree to the Petitions of Your Ancient Subjects, and of some New Ones, it may please you to suspend Your Royal Judgment till all the Classes and Communities which compose our Colony shall have been universally and legally called together, which the Lateness of the Season, at present prevents us from doing; so that by these Means the unanimous Wish of our People may be transmitted to Your Majesty.

This is what Your faithful and loyal Canadian Subjects, relying upon Natural Right, and still more, upon Your Paternal Affection, humbly hope to obtain from their Most Gracious Sovereign. They will never cease to pray for the Preservation of Your Sacred

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Person, for your August Family, and for the Prosperity of your Realm. Such are the feelings which lead us to subscribe ourselves, with the deepest Respect.

Sire

Your Majesty's

Most humble,

most obedient Faithful

and loyal Subjects.

A DRAUGHT OF A PROPOSED ACT OF PARLIAMENT FOR THE BETTER SECURING THE LIBERTIES OF HIS MAJESTY'S SUBJECTS IN THE PROVINCE OF QUEBECK IN NORTH AMERICA;[1]

OR

AN ACT TO EXPLAIN AND AMEND AN ACT PASSED IN THE FOURTEENTH YEAR OF THE REIGN OF HIS PRESENT MAJESTY, INTITLED, "AN ACT FOR "MAKING MORE EFFECTUAL PROVISION FOR THE GOVERNMENT OF THE "PROVINCE OF QUEBECK IN NORTH AMERICA."

N.B. Mr. Powis moved for leave to bring in a bill to this effect in April, 1786.[2]

The Laws of England relating to the writ of Habeas Corpus ad Subjiciendum, and the Protection of personal Liberty, shall take place in the Province of Quebeck,

For the better securing the Liberties of His Majesty's Subjects in the Province of Quebeck in North America, IT IS HEREBY ENACTED by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, That all the Laws of England relating to the Protection of personal Liberty by and by Virtue of the Writ of *Habeas Corpus ad Subjiciendum*, or otherwise, that were in force in England on the seventh Day of October in the Year of our Lord Christ one thousand, seven hundred, and sixty three, (being the Day of the Date of His Majesty's Royal Proclamation under the Great Seal of Great Britain

[1] Canadian Archives, Q 56-3, p. 618. This bill was introduced into the British House of Commons on April 28th, 1786, and was evidently drawn up about the same time as the petition of Nov. 24th, 1784. It will be observed from the tenor of it that those who framed it had in view the actions of Governor Carleton in dismissing Chief Justice Livius, and of Governor Haldimand in his "short methods with dissenters," as also the opposition of these governors to the introduction of the writ of Habeas Corpus and of trial by jury in civil matters.

[2] Mr. Powis, or Powys as the name is given in the parliamentary records, was a prominent member of the Opposition, usually co-operating with Fox, Burke, Sheridan, Savile, Courtney and others of that group. He took a special interest in Canadian affairs and, in succession to Sir Geo. Savile, mover of the famous resolution regarding the increasing power of the Crown, was active in pressing upon the attention of the Ministry and the House of Commons, the claims of those of both races in Canada who desired a less autocratic form of Government. The following note will indicate some of his activities in connection with the foregoing petitions: House of Commons; March 30th, 1786. "Mr. Powys having reminded the House, that he had last session of Parliament presented a petition from the principal inhabitants of Quebec, complaining of certain grievances in their legislative authority; it was then thought advisable to postpone the consideration of the subject, as government would undoubtedly remedy the complaint. He was sorry, however, to observe, that during that interval, there had been no appearance of Administration redressing the grievance of the petitioners; he therefore thought it a duty incumbent upon him to give notice, that he would, on the first open day, submit to Parliament a proposition for redress." The *London Chronicle*, Vol. 59, p. 308.

In supporting his motion for leave to bring in this bill, he said it was chiefly intended to enforce the Instructions given to the Governors after the Quebec Act, and also to secure "an emancipation of the Legislative Council from the uncontroulable authority of the Governor, by whom they were liable to be displaced without cause assigned." Mr. Pitt, while considering that some reconstruction of the Government of Quebec might be extremely necessary, yet felt that in view of the very contradictory petitions which the Ministry had received from the Province, it was premature to go into the question until Sir Guy Carleton, who had just been appointed to the Government of the whole of British North America, had reported on the condition of the country. Mr. Fox "professed himself at all times to have been an enemy to the Quebec bill, and a friend to every alteration of it which was proposed." He therefore supported the measure. Mr. Sheridan and others also supported the bill, referring to the extraordinary powers conferred upon Carleton by his new Commission and considering him as scarcely the most likely person to report in favour of diminishing his own authority. After an interesting debate the motion was defeated by 61 to 28. *London Chronicle*, Vol. 59, p. 407.

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after the 1st day of September, 1785.

for erecting four new civil Governments in the Countries and Islands then newly ceded to the Crown of Great Britain, to wit, the Governments of Quebeck, East Florida, West Florida, and Grenada) shall be in force in the said Province of Quebeck from and after the first Day of next September in this present Year of our Lord one thousand, seven hundred, and eighty-five, as being one of the principal Benefits of the Laws of England that were promised in His Majesty's Proclamation above-mentioned to His Majesty's Subjects residing in the said Province. And further the said Writ of *Habeas Corpus* shall be granted in the Manner prescribed by the Statute made in that Behalf in the thirty first Year of the late King Charles the Second, not only in all Criminal, or supposed Criminal, Cases, but in all other Cases, whatsoever in which the said Writ or *Habeas Corpus* might have been granted in Term-Time by the Court of King's Bench in England, on the said seventh Day of October in the Year of our Lord one thousand, seven hundred, and sixty-three.

But they may be Suspended for three months at a time by an Ordinance of the Legislative Council of the Province in times of actual rebellion in the Province or of an invasion of it by a foreign Country.

PROVIDED nevertherless, that, when the Peace of the said Province shall be actually broken, either by a Rebellion or any of His Majesty's Subjects in the said Province against His Majesty's Authority, or by an Invasion of the said Province by a foreign Enemy, but in no other Case whatsoever, it shall and may be lawful for the Governor in Chief, or the Commander in Chief, of the said Province, or, in Case of his Death or absence from the said Province, for the Lieutenant-Governour, or Commander in Chief, of the said Province, by and with the Advice and Consent of the Legislative Council of the said Province, in a Meeting of the said Council in which not fewer than seventeen Members of the same shall be present, to pass an Ordinance for suspending the Right of His Majesty's Subjects in the said Province to the Relief afforded by the said Writ of *Habeas Corpus* for the space of three Months, and no longer; by Virtue of which Suspension all Persons that shall have been committed to Prison by the Warrant, or order in writing, of any lawful Magistrate, in the Province having competent Jurisdiction to make such Commitments, upon either a positive Charge, or a Suspicion, of High Treason, expressed in the said Warrant, or Order, may be detained in Custody without Bail or Mainprize to the End of the said three Months, during which the said Ordinance for suspending the Writ of *Habeas Corpus* shall be in Force. And it shall also be Lawful for the Governour in Chief or Lieutenant-Governour, or Commander in Chief, of the said Province, with the legislative Council of the same, in a Meeting of the said Council, in which not fewer than seventeen Members shall be present, in case the Disturbance of the Peace in the said Province shall continue during the Space of two Months, or more, out of the said three Months of suspension of the *Habeas Corpus* appointed by such first Ordinance, to pass a second Ordinance at the end of the said two Months, or more, to prolong the suspension of the said Writ of *Habeas Corpus* for a further Time, so that it shall continue for the Space of three Month's from the Time of passing such second Ordinance; and so on from Time to Time, at the Distance of two Months or more from the Time of passing any such Ordinance, it shall be Lawful to pass another Ordinance to prolong it's Operation for a further Space of Time, so that it shall continue for the Space of three Months from the Time of passing every such preceeding Ordinance, so long as the Continuance of the Disturbance of the Peace of the Province shall make such Ordinances necessary.

The Governor of the said Province shall in no Case imprison any person by his own Warrant, or order.

AND IT IS FURTHER ENACTED by the Authority aforesaid, That from and after the said first Day of September next in the present Year of our Lord one thousand, seven hundred and eighty-five, it shall not be Lawful in any case for the Governour in Chief of the said Province, or, in Case of his Death or Absence from the said Province, for the Lieutenant-Governour,

or the Commander in Chief, of the said Province, (who in such cases become invested with the Powers and Privileges of the Governour in Chief, and cannot be prosecuted criminally in the Courts of Justice in the Province,) to commit any Person whatsoever to Prison for any Offence, or Cause, whatsoever by his own Warrant, or Order: but all such Imprisonments shall be made, when necessary, by the Warrants, or Orders, of the Chief Justice of the said Province, or of the Judges of the King's Courts in the said Province, or by the Justices of the Peace, or Commissioners of the Peace, in the said Province, or other Magistrates having competent Jurisdiction in the said Province, by their Warrants, or Orders in Writing, in which the Offences, or Causes, for which such Imprisonments shall be made, shall be expressed.

And the said Warrants, or Orders in Writing, shall remain in the Hands of the Keepers of the Prisons to which such Offenders shall be committed, to the End that they may be produced by them as the Grounds of their Justification for having detained such Persons in Prison, either when they shall be required by the Chief Justice, or other Judges of the Province, by Means of a Writ of *Habeas Corpus ad Subjiciendum*, to bring up the Bodies of the Prisoners detained in their Custody, together with the Causes of their being so detained, before the said Chief Justice, or other Judges, or when they shall be sued in any of the Courts of Justice in an Action of Trespass and false Imprisonment for having so detained any of the said Prisoners.

Provisoe with respect to the power of arresting military Officers, or Soldiers, which he may have, if he shall be an Officer of the Army, by virtue of any Act of Parliament for the punishment of mutiny and desertion.

PROVIDED nevertherless, that nothing herein before enacted shall prevent the Governour in Chief, or Lieutenant-Governour, or Commander in Chief, of the said Province, being a Military Officer in His Majesty's regular Troops, from arresting and keeping under Arrest any Officer, or Soldier, in the said Troops, that is under his Command, by Virtue of any Authority he may be invested with for that purpose by any Act of Parliament for the Punishment of Mutiny and Desertion in the Army that may be then in Force; but he shall have the same Right to exercise such Military Authority as he would have had if he had not been the Governour in Chief, or Lieutenant-Governour, or Commander in Chief, of the said Province.

The Members of the Legislative Council shall not be liable to be removed, or suspended by the Governour of the Province but only by the King.

AND IT IS FURTHER ENACTED by the Authority aforesaid, That from and after the said first Day of September next in the present Year of our Lord one thousand seven hundred, and eighty-five, no Member of the said Legislative Council shall be liable to be either removed from his place and Office of a Member of the said Council, or Suspended from his Exercise of the same for any Time, how short soever, by the Governour in Chief of the said Province, nor in any other Manner than by His Majesty's Order in his Privy Council of Great Britain, or under his Signet and Sign-Manual counter-signed by one of His Majesty's principal Secretaries of State.

The Judges of the Province shall not be liable to be removed or suspended by the Governour, but only by the King.

AND IT IS HEREBY FURTHER ENACTED by the Authority aforesaid, That, from and after the said first Day of September in this present Year of our Lord one thousand, seven hundred, and eighty-five, neither the Chief Justice of the said Province nor any of the Judges of the Courts of Criminal or Civil Jurisdiction in the same, shall be liable to be removed from his Office of Chief Justice, or Judge, by the Governour in Chief of the said Province, nor in any other Manner than by His Majesty's Order, in His Privy Council of Great Britain, or under His Signet and Sign-Manual countersigned by one of His Majesty's principal Secretaries of State.

Unless the Legislative Council shall address the

PROVIDED nevertherless that, if an Address shall be presented to the Governour in Chief of the said Province, or, in Case of his Death or Absence from the said Province, to the Lieutenant-Governour or Commander in

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Governour to suspend a Judge for some misconduct or neglect of duty; in which Case he may be Suspended for one Year.

Chief of the same, by a Majority of the whole Number of the Members of the said Legislative Council, setting forth some Misconduct or Neglect of Duty in the Chief Justice of the Province, or in any other Judge of the same, and thereupon praying that he may be suspended from his Office of Chief Justice, or Judge, in the said Province for the Space of a Year, it shall be lawful for the Governour in Chief of the said Province, or, in Case of his Death or Absence from the said Province, for the Lieutenant-Governour or Commander in Chief, of the said Province for the Time being, to suspend the Chief Justice, or Judge, against whom such Address of the Legislative Council shall have been presented, from the exercise of his said Office of Chief Justice, or Judge, in the said Province for the said Space of one year: After which Time the said suspended Person shall either resume the Exercise of his said Office of Chief Justice, or Judge, in the said Province or be Suspended from the Exercise of it for a further Time, or be intirely removed from it, as the King's Majesty shall think fit to direct in the Course of the said Year of his Suspension either by His Order in His Privy Council of Great Britain, or by an Order under his Signet and Sign-Manual countersigned by one of His principal Secretaries of State. And if no such Signification of the King's Majesty's Pleasure on the said Suspension shall be made in the course of the Year, during which it shall continue, the said Suspension shall be at an End at the Expiration of the said Year, and the said Chief Justice, or Judge, that shall have been so Suspended, shall resume the Exercise of his said Office. And no Suspension of the Chief Justice of the said Province, or of any other Judge in the same, from the Exercise of his said Office of Chief Justice, or Judge, made by the Governour in Chief of the said Province, or any other Person therein, in any other Manner than is herein before set forth, shall be of any Validity, or Force, whatsoever.

Persons admitted to act as Advocates in the Courts of Justice in the Province of Quebeck Shall not be Suspended from the exercise of their said profession by any authority but that of the Judges of the Courts in which they practice, and by them only by a written Order, mentioning the Cause of Such Suspension.

And it is further Enacted by the Authority aforesaid, That, from and after the said first Day of September in the present Year of our Lord one thousand, seven hundred, and Eighty-five, no Barrister at Law, or other Person who has been admitted, according to the Rules and Customs established in the said Province of Quebeck, to act as an Advocate at the Bar of any Court of Justice in the said Province, shall be prohibited, or suspended, from the Exercise of the said Profession of an Advocate in the said Court, for any Time how short soever, in any other Manner, or by any other Authority than that of an Order of the Judge, or Judges, of the Court in which he has acted as an Advocate, grounded either on some Misconduct in his Capacity of an Advocate in the said Court, or on a legal Conviction of some Felony, or other Offence; which Order of the Judge, or Judges, of the Court, either for excluding him perpetually from the Liberty of acting as an Advocate in the said Court, or for suspending him therefrom for a limited Time, shall be in writing and shall set forth the particular Fault in the said Advocate's Conduct in the said Court, or the Offence whereof he shall have been legally convicted, as aforesaid, on which the said Order shall be grounded. And an Appeal shall lie from the said Order of Prohibition, or Suspension made by the Judge, or Judges, of the Court in which the said Advocate shall have practised, to the Legislative Council of the said Province, who, after due Consideration of the Matter, shall either rescind the said Order, or confirm it, or mitigate the Severity of it by reducing it from a total and perpetual Prohibition to a temporary Suspension from the Exercise of his said Profession of an Advocate, or from a suspension for the Time mentioned in the Order to a Suspension for a shorter Time, as they shall see Occasion. And from the Decree that shall be made herein by the said Legislative Council there shall lie a further Appeal to the King's Majesty in his Privy Council of Great Britain; where

An Appeal shall lie from Such Order of the Judges to the Legislative Council, and from the decree of the Legislative Council to the King, in his Privy Council of Great Britain.

the Matter shall be finally determined. But every such Order of Suspension of an Advocate from the Exercise of his Profession shall be in Force and take Effect, notwithstanding an Appeal shall have been made from it, until such Appeal shall have been heared and determined and a Decree shall have been made by the Court appealed to, whereby such order of Suspension shall have been rescinded, or altered.

AND, whereas there are good Grounds for believing that the Introduction of the Trial by Jury into the said Province of Quebeck in Civil Actions, whenever either of the Litigant Parties shall desire it, in the same Manner in which it actually took Place in the said Province from the Month of September in the Year of our Lord one thousand, seven hundred, and sixty-four, till the first Day of May in the Year of our Lord one thousand, seven hundred, and seventy-five, would greatly contribute to the fair and impartial Administration of Justice in the said Province, IT IS THEREFORE FURTHER ENACTED by the Authority aforesaid, That, from and after the said first Day of September in the present Year one thousand, seven hundred, and Eighty-five, the said Method of Trial by a Jury of twelve good and lawful Men shall again take Place in the said Province in all Civil Actions in the Courts of Justice in the same, whensoever both, or either, of the Parties shall desire it; but not otherwise. And, to the End that the Persons who shall be chosen to serve on Juries may attend their said Duty with the more Chearfulness, they shall receive, as a Reward for their Attendance and Trouble, the Sum of Half a Spanish Dollar to each Jury-Man; which Sum shall be paid to them immediately in Court as soon as they shall have brought in their Verdict, by the Party which shall have desired to have such mode of Trial, or, if both Parties shall have joined in desiring such Mode of Trial, by both the Litigant Parties equally.

After the 1st Day of next September 1785, the Trial by Jury shall take place in the Said Province in the determination of Civil Actions in the same, whenever either of the parties shall desire to have it.

AND, to the End that the Resolutions and Proceedings of the Legislative Council of the Province (by which the said Province is now governed without an Assembly elected by the Freeholders of the same) may be made more agreeable to the general Sense and Inclinations of the People of the same, IT IS FURTHER ENACTED by the Authority aforesaid, That, from and after the first Day of next September, in the present Year of our Lord one thousand, seven hundred, and eighty-five, the Legislative Council shall consist of not fewer than thirty-one Members, who shall be nominated and appointed by the King's Majesty, in the same Manner as the Members who now compose the said Council have been nominated and appointed by Virtue of the Act of Parliament passed in that Behalf in the fourteenth Year of the Reign of His present Majesty.

After the 1st Day of next September 1785, the Legislative Council of the Province of Quebeck shall consist of at least thirty-one Members.

FINIS

PETITION OF SIR JOHN JOHNSON AND LOYALISTS.[1]

Copy of a Petition, intituled, "The Petition of Sir John Johnston, Bar[t] and others in Behalf of the Loyalists settled in Canada." Dated London, 11[th] April 1785; and signed by Colonel Gay Johnson, and others.

To the King's Most Excellent Majesty.

The Petition of Sir John Johnston Baronet, and others, whose names are hereunto subscribed, on Behalf of the Officers and Soldiers of the Provincial Troops and Indian Department, who served under their Command during the late Rebellion; and of the other Loyalists, their Associates, who have taken Refuge in Canada.

Most humbly Sheweth,

[1] Canadian Archives, Q 62A-1, p. 339. See also "Copy of a Memorial to Sir John Johnson, from the Officers and private Men of the late Corps of Loyal Rangers, now inhabitants of the Royal Seigneurie No 2 above Catarequoiu." Q. 24, p. 262.

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That the Persons of the above Description, animated by your Petitioner's Example, having sacrificed their Estates and Properties in support of Your Majesty's Laws and Government, did faithfully serve in Canada, and on its Frontiers, till the Reduction of these Corps; when being still actuated by the same Principle of Loyalty and Affection, they, to the number of several Thousands, resolved to settle within Your Majesty's Government, on the Lands assigned them as a Reward for their Services, and in pursuance of the Proclamation of Your Majesty's Commissioners in the year 1776; and entered earnestly on the Improvement thereof, with a Prospect of making a Provision for their Families, and thereby contributing greatly to the Advantage, Strength, and Security of that Province, and to the Increase of Your Majesty's Revenues.

That the Tenure of Lands in Canada is such as to subject them to the rigorous Rules, Homages and Reservations, and Restrictions of the French Laws and Customs, which are so different from the mild Tenures to which they had ever been accustomed, and which continue to be enjoyed by the rest of Your Majesty's Subjects, has occasioned a general Discontent, and would have induced many to decline accepting their Locations, and to resolve on abandoning their Enterprize, but for the Influence of Your Petitioners, who had first led them into the Service, and on whose Endeavours they relied for obtaining, through Your Majesty's Favour, the Grant of such Terms and Tenures, and the Establishment of the same Laws as they formerly enjoyed under the auspices of Your Majesty's Government. In full Confidence of this happy Event they were prevailed upon to persevere in their Settlements, on which they have already, at some Expence, and much Labour, erected Habitations, and cleared Part of the Lands allotted to them.

For the Attainment of these Objects, so essential to the Happiness of Your Majesty's faithful Subjects, so conducive to the Increase of these new Settlements, and so salutary in their Consequences to the Public, we have, upon mature Deliberation, formed a Plan, which with the reasons in support of it, we humbly presume to submit to Your Majesty's Royal Consideration.

1st It is proposed, that the County of Point Boudet, on the Lake St François, in the River St Lawrence, and from thence Westward, shall be comprehended within One District, distinct from the Province of Quebec, under the Government of a Lieutenant Governor and Council, to be appointed by Your Majesty, with the necessary Powers of internal Regulation, but subordinate to the Governor and Council of Quebec, in the same manner as the Island of Cape Breton now is, to the Government of Nova Scotia. This Territory will include all the Settlements made or intended to be made by the disbanded Corps, and the other Loyalists, while it leaves all French Canada and the French Seigneuries as they were before.

2dly That this Territory shall be subdivided into smaller Districts or Counties, Cataraqui[1] being the Metropolis, with Courts of Justice, to be established by Your Majesty.

In support of such an Arrangement, we beg leave to remark, that it will be productive of the most beneficial Consequences, not only to the Settlers, but to the Nation at large—. Whilst this Territory remains a Part of the Province of Quebec, and the Inhabitants amenable to the Courts of Justice there and at Montreal, the Delay and expence of an Attendance on those Courts, both to Suitors and Witnesses, will be enormous, the distance from Detroit to Montreal being not less than Six hundred Miles, without any Road whatsoever, and the water communication exceedingly tedious, precarious, and during the Winter Season absolutely impassable: Crimes will be committed with Impunity, from the difficulty of Prosecutions; and Civil Remedies in effect rendered burthensome from the same causes.

The Inhabitants of this Territory, already amounting to several Thousands, conceive with all Humility that they have the strongest Grounds to hope for such an exempt Jurisdiction as they ask for; They were born British Subjects, and have ever been accustomed to the Government and Laws of England. It was to restore that Government, and to be restored to those Laws, for which from Husbandmen they became

[1] Afterwards Kingston.

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Soldiers, animated with the Hope, even in the most gloomy Aspect of Public Affairs, that should they fail in their Attempts to recover their former Habitations by a Restoration of Your Majesty's Government, they would still find a Resource in some Parts of the British Dominions, where they might enjoy the Blessings of British Laws and of the British Government; and they still possess the greatest Confidence, that by Your Majesty's Gracious Interposition they will be exempted from the Burthens of French Tenures, which, however congenial they may be to Men born and bred under them, would be in the highest Degree exceptionable to Englishmen.

The Petitioners have the more Confidence in the Success of their Application, from reflecting that they do not ask for more than has already been granted to their Fellow Sufferers in Nova Scotia, for less indeed than is enjoyed by those who are settled in the Province of New Brunswick, and only to be in the same situation with the Settlers in the Island of Cape Breton : A distinction between men under the same circumstances of Prescription, Confiscation, and Attainder, and who have been invited into the Public Service, and to take Part in the Royal Cause, by the same assurances of Protection, and the same Gracious Offers of Rewards, in the one case continuing to Settlers the Blessings of the British Constitution, and in the other subjecting them to the Hardships of French Tenures and French Laws, they trust will not be permitted by a Gracious Sovereign, who is the Father of all His People.

In consideration of the vast extent of this Territory, along an important and valuable Communication, which is not only the Channel of the Fur Trade, but the Residence of those Nations of Indians who took part in Support of the Royal Cause, the Security, growth, and extension of these Settlements, must evidently be an object of the utmost Consequence, not only as it will most essentially secure and promote that Trade, but as it will preserve those Indians in their adherence to Your Majesty.

The United States are duly impressed with this Idea, and have already manifested a purpose of supplanting us in the Friendship of the Indians; and unless they are counteracted, the British Interest with those Nations will very rapidly decline. We humbly presume that effectually to counteract them nothing would be so conducive as the Establishment of a liberal System of Tenure, Law, and Government in this new Settlement; this would best contribute to the Growth and Increase of it; whilst it would stimulate the Adventurers themselves to the most vigorous Exertions, it would invite and encourage Emigration to it; for as the present Inhabitants before the Rebellion principally resided in the now United States, their extensive connections there, from their Attachment to Your Majesty, their ancient Predilection in favour of the British Government, their Dislike of the Republican Government they now live under, as well as from their Family, and Personal Attachments, would be strongly induced to remove to this new Colony : Should Your Majesty graciously vouchsafe Your Royal Protection to these Settlements, we are confident that in every Competition for the Favour of the Indians Your Majesty will have a decided Advantage, not only from the Influence which many of your Petitioners are known to have over them, but because Numbers of the present Settlers have long been in Habits of Friendship and mutual good Offices with them, sharing the same Dangers, and fighting in the same Cause, and whose former Prepossession would thus, by means of a familiar and constant Intercourse with Your Majesty's Faithful Subjects, be best preserved and rendered permanent.

Upon the whole, whether we consider the Relief and Prosperity of the Settlers as Sufferers in the Cause of their King and Country, for whom Your Majesty has ever expressed so Benevolent a Disposition, or the Advancement of the Settlement, as conducive to the Benefit of the Nation, in either View, and much more in both respects, do we conceive that the Plan now proposed is such an one as will merit and obtain Your Royal Attention and Patronage.

For our Part, we conceive ourselves bound by the strongest Ties to use every Endeavour in our Power to promote the Wishes of these People; It was by our Example that numbers of them were induced to quit their former Possessions, and to take up Arms, by which they have been deprived of their Property, and Banished from their Country; and it was from their expectation of the Success of our Representation to their Sovereign, that they have entered upon the arduous undertaking of forming Settlements in a wild

and inhospitable Country ;—Well knowing the Disposition of these People, and the Habits in which they have been bred, we think it our Duty most respectfully to declare it to be our opinion, that unless they can obtain the object they are in pursuit of, they will be discouraged from Carrying on their present Enterprize, and prefer some other part of Your Majesty's Dominions, where they may enjoy the Blessings of the British Constitution, but where perhaps they would not be equally useful as they will be in their present situation, should they receive the Protection they solicit.

Your Petitioners, therefore, impelled by motives of Humanity towards a Number of Distressed Families, by a sense of Honor and Justice to a set of deserving Men, who placed Confidence in them, and to whose Eventual Loss of Property and Reverse of Fortune, they consider themselves in a great Degree accessary, and at the same time by a Conviction of the Public Utility of the Measure, most humbly implore Your Majesty that the Blessings of the British Laws and of the British Government, and an exemption from the Tenures, may be extended to the aforesaid Settlements.

London
11th April 1785.

(Signed)
Gay Johnson, Col. 6 Nations & Superintendant of their Affairs.
John Butler. L^{t} Colonel Commanding late Rangers.
Eben Jessup, late L^{t} Col. Commd^{g} King's Loyal Americans.
James Gray, late Major K. R. Reg^{t} New York.
Ed^{w} Jessup, Major Commd^{g} late Corps of Royal Rangers.
Rob^{t} Leake, Major late 2^{d} Batt^{n} K. R. Reg^{t} New York
John Munro. Cap^{t} late 1st Batt^{n} K.R. Reg^{t} New York.
P. Daly. Cap^{t} late 1st Batt^{n} K. R. Reg^{t} New York.
Tho^{s} Gummersal Cap^{t} late 1st Batt^{n} K. R. Reg^{t} New York.

HAMILTON TO SYDNEY.[1]

Duplicate Quebec 20th April 1785.

My Lord

In a former letter to your Lordship, I made an undisguised avowal of my entire ignorance of various matters relative to the state of this Province very necessary to be known by a person in my situation.[2] Tho' I dayly gain some information yet I am apprehensive that my long letters contain too little matter to be interesting.

The minutes of Council will no doubt display the endeavours of some of the Members to bring forward salutary measures, to improve defective Laws, & to render a British Constitution desirable as well as venerable.

These endeavours will appear to have been opposed and counteracted generally by the same persons whose attempts however sometimes fall short of their aim.

[1] Canadian Archives, Q 24-2, p. 291. When Haldimand returned to Britain in the autumn of 1784, Lieut. Governor Henry Hamilton assumed office as administrator of the Civil Government, while St. Leger was placed in command of the military affairs, with Hope as Commissary General. After the passing of the Quebec Act Hamilton had received his appointment from Dartmouth as Lt. Governor at Detroit, and was one of those to whom fell the unfortunate duty of employing the Indians to harass the scattered frontier settlements of the English colonists in Pennsylvania and Virginia, during the Revolutionary War. Afterwards, as Lt. Governor of Quebec Province and President of the Legislative Council, by his advocacy of the extension of British institutions in Canada, he incurred the enmity of Governor Haldimand and his friends, especially Col. Henry Hope, who succeeded him as Lt. Governor. Thomas Townshend, afterwards Viscount Sydney, was one of the Secretaries of State in 1782, but had been replaced by Fox during the Shelburne Administration. He again became Secretary of State for the Home Department, on Dec. 23rd, 1783. He was created Baron Sydney in March, 1783, and Viscount Sydney in 1789.

[2] The letter referred to is evidently that of Dec. 2nd, 1784, in which he refers to his inexperience in the details of the government, owing to the lack of information. See Q 24-1, p. 24. He brings up the matter again in his letter of Jan. 23rd, 1785. Q 24-1, p. 258. Hamilton had made repeated applications to Haldimand before his departure, for information and instructions relative to the government of the Province. These being withheld, up to the last moment, he had made application to Sydney for the necessary papers and instructions. See Hamilton to Haldimand, Q 23, p. 392 ; Hamilton to Sydney, Q 23, p. 389 ; and Finlay to Nepean, Q 23, p. 438.

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It might seem a hazarded opinion to advance that there are a few persons in this Province who appear desirous that the Canadians should feel such restraints and bear such burthens under English Government as shall keep their minds open to favorable impressions of their former situation under French Laws and an Arbitrary Government. What other principle could operate to prevent the substitution of legal means to the odious partial services by corvées? Why have not the services been regulated and equallized ![1]

A principal object for the consideration of the Legislature is the arrival in this Province of numbers of Englishmen or the descendants of Englishmen who must abhor their being subjected to an authority they have been unacquainted with, and to men whose language & customs they are as yet strangers to. Provision by Law should be made to conciliate these people, and if possible prevent complaint by anticipating their grievances.

Until this day the Militia Ordinance remains unamended, tho' its defects are palpable & even acknowledged by those who might reform it—They advance, that this is not a proper period, but, if a time of Peace is not the properest time to relieve a people from the burdens indispensibly borne in a time of War, these Gentlemen see not the readyest means of contenting the Canadians, or are wilfully blind to them.[2]

The general terms in which I represented this matter at the opening of the Session not having produced the desired effect, I took occasion in the Private Council to enter more particularly into the subject, at the same time expressing my wish that the Canadians should participate with the Old Subjects in all the advantages of the English Constitution mentioning the various provisions and considerations which had governed the British Legislature in forming the English Militia Law.

One of the Members, a native of this Country advanced, that the new subjects in this Province would Universally prefer their Ancient Government, and return to the dominion of their ancient Master or Masters. This being uttered with Vehemence produced a ferment which I interrupted by addressing myself to the Member, who was (I believe) struck with a sense of his own imprudence, saying, "Monsieur, si ses gens "croyent par là montrer leurs bons sens, du moins ils ne demontrent point ce que demande "leur devoir." What followed from the Members, being likely to produce acrimony and personalities I thought proper to stop them by saying, "brisons la dessus" and urged the further consideration of the business before us.

I cannot help My Lord calling to mind the Marquis de la Fayette,[3] his visit to the Indians, the inherent Attachment of the French to whatever is French, the possibility of a revival of natural prejudices upon the event of a Continental War in Europe, and the indefatigable industry of the rivals of Britain to create for her difficulties and embarrassments: the unrestrained maxims of their policy which all the world has experienced and which they think Justifiable if subservient to their boundless ambition.

My Lord, I give no credit to this Gentleman's assertion, but I will venture to advance that if any thing can effectually hasten the disaffection of the Canadians to British Government, it is the idea which some few entertain and which seems to govern their reasonings and actions, that a military system alone with an adherence to the maxims of a military Government can retain the people of this Colony in their allegiance. An enquiry into the character consequence and unbiassed disinterestedness of these few persons whom I could count up without employing many figures would satisfy your Lordship that they cannot have the confidence of the people at large, wanting fortune, activity, information and true public spirit.

[1] There was much protest among the general body of French Canadians, except of course the Seignieurs, against the enforcement of the Corvées and other feudal exactions of the older Régime, as enforced by Carleton and Haldimand, and later by Hope within whose functions as Quartermaster General these matters lay. Among numerous papers on the subject may be taken a group giving the French complaints and Hope's reply. See Q 25, p. 438.

[2] The military administration of the Province was in the hands of St. Leger and Hope. For a vigorous criticism of Hamilton's administration after the departure of Haldimand, see Hope to Haldimand, May 26th, 1785. Q 24-2, p. 386.

[3] Referring to the visit of Lafayette and the American Commissioners to various tribes of western Indians. At Fort Stanwix they met with deputies from the Six Nations. See Haldimand Papers, B 58, p. 14; also, Q 24-1, pp. 17 and 43.

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Your Lordship knows, Canada is no longer what it was at the conquest; it is (as I have reason to think) much altered since the American Independence took place.

Besides the afflux of persons disgusted with American Government, the load of taxes imposed on those who yet remain under it must shew to the Canadians their advantages over them in situation which they were blind to while the American Emissaries during the late rebellion amused them with the florid display of the blessings of American liberty.

Those persons who by their mere negatives to matters brought on in Council, stop, or prolong the proceedings, are not armed with argument to support their naked votes, & lean upon the faith, information and suggestions of those few who have more subtility and plausibility than solid Argument.

The minutes speak for this assertion, but My Lord I must resort to Your indulgence for thus openly & perhaps too warmly treating this subject.

I have heard it said that I encourage petitioners and remonstrants—it may be so understood because in the last Session of the Legislative Council, I voted for throwing open the doors of the Council chamber.[1] I receive all Applications from the highest to the lowest, I wish to render Justice to all. If Petitioners are not heard how shall abuses be reformed!—if I have not the confidence of the people at large, I shall be a stranger to their discontents, 'till they break out in murmurs and it may then be too late to apply a Remedy.

The papers which shall be transmitted from time to time I expect will vindicate this reasoning, in the interim Your Lordship will please to Justify me in so much as I have not reaped the advantage of those notices and instructions which I am to hope will come to my assistance from Your Lordship in the short period of the absence of a Superior[2]

I have the honor to be with profound deference and respect

My Lord

Your very obedient and

Very faithful servant

HENRY HAMILTON

The Right Honorable Lord Sydney
One of His Majestys Principal Secretaries of State

ORDINANCE ESTABLISHING TRIAL BY JURY.
ANNO VICESIMO QUINTO GEORGII REGIS.[3]

CHAP. II.

An Ordinance to regulate the Proceedings in the Courts of Civil Judicature, and to establish Trials by Juries in Actions of a Commercial Nature and Personal Wrongs to be compensated in Damages.

Preamble. Whereas it is necessary for the Ease and Conveniency of His Majesty's Subjects who may have Actions to prosecute in the Courts of Civil Judi-

[1] This refers to the proceedings in Council in April, 1784, when a number of citizens of Quebec made application for permission to be present at the debates of the Legislative Council. The Council by a vote of 11 to 5 adopted the following position, "The Council have voted that the Gentlemen who requested admission to hear the Debates this day cannot be admitted. This to serve as an answer to every future application." Reasons of dissent were recorded by Lt. Gov. Hamilton, President of the Council, and Mr. Finlay. Hamilton's reason was, "because our Debates have for object the benefit of the province." The reason for their votes put forth by the leaders of the majority, was that their oath as councillors required them to keep secret all that might be discussed in Council. Mr. Finlay, in his reasons for dissent, sought to prove that no such limitations applied to the proceedings of Council as a legislative body. See Q 23, pp. 235-241.

[2] As a result of the representations of Haldimand and Hope what came to him was the following, "I have received the King's Commands to signify to you, that His Majesty has no further Occasion for your Services as Lieutenant Governor of the Province of Quebec, and that it is His Royal Pleasure that you do return to England, leaving with Colonel Hope, who is appointed to succeed you, such Instructions and Documents of Government as are in your possession, and which may be necessary for his guidance." signed. "SYDNEY." Q 25, p. 34.

[3] Canadian Archives, Q 62 A-2, p. 601. The Ordinance for regulating the proceedings in the Courts of Civil Judicature, first passed in 1777, (see p. 466) had been renewed every two years, with practically no

cature established in this Province, that the mode of Administering Justice in the said Courts should be clearly ascertained, and rendered as plain as possible:

Be it therefore Ordained and Enacted by His Honour the Lieutenant Governor and Commander in Chief of this Province, by and with the Advice and Consent of the Legislative Council thereof, and by the Authority of the same it is hereby Ordained and Enacted.

Manner of Proceedings in the actions above the Value of £10 Sterling.

Art. 1. That in all Causes, or Matters of Property, exceeding the Sum or Value of Ten Pounds Sterling, upon a Declaration presented to any one of the Judges of the Court of Common Pleas by any Person, setting forth the Grounds of his Complaint against a Defendant, and praying an Order to compel him to appear and answer thereto, such Judge shall be and hereby is empowered and required in his separate District to grant such an order, whereby the Plaintiff may have and obtain from the Clerk of the Court a Writ of Summons in the Language of the Defendant, to be issued in His Majesty's Name, and attested by name of such Judge, to be directed and executed by the Sheriff of the District where such Court shall have Jurisdiction, and in which the Defendant may be or doth reside, commanding such Defendant to be and appear in such Court to Answer to the Plaintiff on the day appointed by such Judge in the Order on the Declaration, Regard being had to the Season of the Year, as well as to the Distance of the Defendants abode or Place of Service from the Place where the Court may sit.

Execution not to be issued against Absentees, till Security be given.

Art 2. Provided always, That a Copy of the Writ of Summons and the Declaration shall be served on the Defendant Personally, or left at his House, with some grown Person there belonging to the Family, and in so doing the Service shall be deemed sufficient: Provided neverthless, that if the Defendant be absent in the Upper Country, or lower Parts of the Province, that is to say, When in or upon any Place beyond the Long Sault on the Ottawa River, or beyond the Oswegatche in the upper Parts of the Province, or in or upon any Place below Cape Cat on the South side, and the Seven Islands on the North side of the River S[t] Lawrence, and where such Defendant hath not been Personally served with such Summons and Declaration as abovesaid, that no Execution shall issue unless the Plaintiff shall give good and sufficient Security, to be approved by the Court, to refund to the Defendant, or his legal Representative as much as the Defendant, appearing by himself or his legal Attorney within a Year and a Day, may be able to set aside and reverse of the said Judgment, by such the Consideration of the said Judgment in the Court where given, as may be presented in the Conditions expressed in the Security to be given as aforesaid for rehearing of the merits of said Cause.

Art. 3. That the said Declaration so to be filed shall not be altered or amended after being filed as abovesaid, unless upon Rule of the Court, and upon payment of Costs.

Attachment against the Body when a Debtor is going to leave the Province.

Art. 4. That in all and every Case where one or more Judges of any Court of Common Pleas is or may be satisfied, by the Affidavit of the Plaintiff, or his Book keeper or Clerk, or legal Attorney, that the Defendant is Personally indebted to the Plaintiff in a Sum exceeding Ten Pounds Sterling, and may also be satisfied, by the Oath of the Plaintiff or some other Person, that the Defendant is immediately about to leave the Province, and whereby the Plaintiff might be deprived of his Remedy against such Defendant, it may and shall be lawful for one or more Judge

alteration, notwithstanding the continued efforts to secure the introduction of trial by jury in civil cases in accordance with the 12th article of the Governor's Instructions (see p. 422). But during the session of 1785, under Lt. Governor Hamilton's administration, on the renewal of the ordinance provision for trial by jury was incorporated. For this the Lt. Governor received the thanks of the mercantile element of both old and new subjects, in an address of May 9th, 1785. See Q 24-2, p. 398.

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or Judges of any Court of Common Pleas to grant a Capias or Attachment against the Body of such Defendant, to be directed to the Sheriff in Manner as aforesaid, to hold such Defendant to Bail, for his Appearance at the Return of such Writ, and in Default thereof to commit him to Prison, there to remain until Special Bail may be given by such Defendant, or until Two Days after execution may be obtained by the Plaintiff, if Judgment be in his Favour.

Art. 5. Provided always, That if any Defendant so bound in Recognizance by Special Bail, shall or do surrender himself in Open Court, pending the Action, or at any Time within One Month after Judgment obtained, or do surrender himself unto the Sheriff of the District where such Court may have Jurisdiction, at any Time within Fifteen Days after the day on which the Plaintiff might legally have and obtain Execution by Capias ad Satisfaciendum upon Judgment obtained, that then and in such case such Surrender of the Defendant shall be held, taken, and considered as a Discharge of the Persons bound for such Defendant on Special Bail.

If Defendant does not appear, Judgment to be entered.

Art. 6. If on the Day of the Return of the Writ of Summons the Defendant does not appear in Person, or by Attorney (Proof of such Service being produced or made in Court) the Plaintiff shall obtain a Default against the Defendant; and if on calling over the Action on the next Weekly Court Day the Defendant should still neglect to appear, without any good Reason for such his Neglect, the Court, after hearing and receiving Sufficient Proof of the Plaintiff's Demand, shall Cause their final Judgment to be entered against the Defendant, and shall award such Costs thereupon as they shall think reasonable, and issue such Execution as the Law, according to the nature of the Case, may direct.

Art. 7. Provided always, That every Proof that may be offered by the Plaintiff in Support of his Action and Demand, shall be filed in Court, and remain of Record, in the same manner as if the Defendant had appeared and defended the Action.

If Defendant appears, he is to answer the Declaration.

Art 8. Provided always, That the Defendant upon his Appearance at the Return Day of the Writ, or in Case of Default upon his Appearance at the next Weekly Court after such Return, and after payment of Costs of such Default as abovesaid, shall then or on such other Day, as he may obtain from the Court, make his Answer to the Declaration, either in writing or Verbally, as he thinks fit; and if the answer be verbal, the Clerk of the Court shall take down the Substance thereof in writing, and preserve the same among the Records of the Court, and in the said Action. And if the Plaintiff doth not appear at the Return Day of such Writ, or appearing doth not prosecute his Action, the same shall be dismissed, with Costs to the Defendant.

Trial by Juries in certain Cases, at the option of the Parties.

Art. 9. That all and every Person having Suits at Law and Actions in any of the said Courts of Common Pleas, grounded on Debts, Promises, Contracts, and Agreements of a Mercantile Nature only, between Merchant and Merchant, and Trader and Trader, so reputed and understood according to Law, and also of Personal Wrongs proper to be compensated in Damages, may, at the Option and Choice of either Party, have and obtain the Trial and Verdict of a Jury, as well for the Assessment of Damages, on Personal Wrongs committed, as the Determination of Matters of Fact, in any such Cause: Provided always, That the Agreement of Nine of the Twelve Jurors who shall compose such Jury shall be sufficient and effectual to return a Verdict, and that the same so made and returned, shall be held as legal and effectual to every Intent and Purpose, *inasmuch*, as if the whole Twelve Jurors had agreed therein; and the Clerk of the Court shall set down the Names of the Jurors on the Register of the Court in every

case where Verdicts may be returned as abovesaid: Provided also, That in all such Causes and Actions that may be between His Majesty's Natural born Subjects of Great Britain, Ireland, or the Plantations and Provinces in America, the Juries in such causes shall be composed of such natural born Subjects as abovesaid; and in all Causes and Actions between His Majesty's Canadian or new Subjects, the Juries shall be composed of such Canadian or new Subjects; and in all Causes of Actions between natural born Subjects and the Canadians or new Subjects; the Jury shall be composed of an equal number of each, if such be required by either of the Parties in any of the above-mentioned Instances.

English Rules of Evidence adopted in Commercial Cases.

Art. 10. In Proof of all Facts concerning Commercial Matters, Recourse shall be had, in all the Courts of Civil Jurisdiction in this Province, to the Rules of Evidence laid down by the Laws of England.

Where neither Party is desirous of the Trial by Jury, Proceedings as formerly.

Art. 11. Provided always, And it is Ordained and Enacted, That in all causes before the said Courts of Common Pleas, where the Parties, Plaintiff nor Defendant, are neither of them desirous of a Trial by the Verdict of a Jury of and respecting Matters legally within the Cognizance of such Jury, but that such Trial should be by the Deposition of Witnesses, and by Proofs, as at present used in His Majesty's Said Courts of Common Pleas, the Court shall, after issue joined on the Merits of the Cause, in the manner as hereafter expressed, appoint a Day for hearing the Evidence of Parties, Plaintiff and Defendant, and cause the same to be taken down in Writing by the Clerk of the Court in open Court, and signed and sworn to by each respective Witness, save and except as hereafter provided for Witnesses absent by reason of Sickness, or of departing the Province.

Provision for examining Witnesses in case of Sickness, or when about to depart the Province.

Art 12. Provided also, That in case of Sickness, and where the Witnesses cannot attend the Court to be ascertained by Affidavit, it may be lawful for the Court in such Cases, and of evident Necessity, after Issue joined as abovesaid, to allow and permit that any one Judge, in the Presence of the Parties, Plaintiff and Defendant, or their Attornies, or in their or either of their Absence, after due Notice signified, may take the Deposition of such Witness in Writing, to be signed and sworn to, and certify and Record the same in the said Court, and there to be of legal Effect; and moreover that such Deposition so taken may be offered and read to the Jury as legal Evidence, if such Cause be to be tried by Jury; and also in Causes instituted in the said Court, where any Witness may be about to depart the Province, and by which means either party might be deprived of his Testimony, to be ascertained by Affidavit, it shall and may be lawful for any Judge of the said Courts to take the Deposition of such Witness, in presence of the Parties, or their Attornies, in the manner as above Expressed, and the same shall be of legal Effect in every Cause in the manner as abovesaid.

Limitation of Pleadings.

Art 13. And it is further Ordained and Enacted, That every Issue in Law or Fact, to be formed in any Cause in either of the said Courts of Common Pleas, between the Parties, Plaintiff and Defendant, shall be made and completed, by the Declaration, Answer, and Replication, or by the Plea, Answer, and Replication, in Cases of Abatement and Bar of the said Parties, Plaintiff and Defendant, and that no other or further Pleadings, or Writings by Way of Plea, upon such Issue or matter in Dispute, whether of Law or Fact, shall be received or admitted by the said Courts of Common Pleas, as part of and to be put upon Record in any Cause therein instituted, and to be heard and adjudged upon, any Thing to the contrary notwithstanding.

When the Sheriff is concerned, the Process to be served by the Coroner.

Art 14. That every Writ and Process which ought to be served and executed by the Sheriff, where it shall happen, that the Sheriff may be Personally interested, and concerned, shall be served and executed by the Coroner of the District in which such Writ, Process, or execution may issue.

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Of Jurors, their Qualifications.

Art 15. That all Merchants or Traders of lawful Age, and also all Persons of lawful Age being Householders, or occuping Lodgings of the value of Fifteen Pounds per Annum Rent, shall be held and considered qualified as Jurors, and to serve on Petit Juries.

Sheriffs to make out list of Jurors.

Art 16. That the Sheriff of each District shall make out Lists of all Persons so qualified as abovesaid, who may reside in the Cities of Quebec or Montreal, or within the Vicinage or Banlieu thereof, and return the same into the respective Courts of Common Pleas of the District in which such Sheriff may officiate, and in which Return shall be set down the Christian and Surname, and also the Profession, Trade, or Calling, and Place of Abode, of such Persons so returned.

Art. 17. That from the said general List the Clerk of each Court shall make two separate Lists or Books, the one to contain the names of all Merchants, Persons concerned in Trade, or qualified to serve on Special Juries, and the other List or Book to contain the names of Persons of different Occupations so returned on the said General List by the Sheriff as aforesaid ; that the said Lists or Books, when so made, shall be examined by the Judges and Sheriff and corrected, if needful, and shall be of Record and open in the Clerks Office to the Inspection of all Persons, without Fee or Reward.

Art 18. That on all and every Cause where a Trial may be moved for and directed to be taken by the Verdict of a Jury, it shall and may be lawful for the Parties, Plaintiff and Defendant, or their Attornies, to strike a Jury from the above Lists or Books so returned into Court, and completed as abovesaid, in the same manner, and under the same Rules, as Special Juries are struck in the Courts of Record in England, (that is to say) from the first List or Book so formed by the Clerk, and approved by the Judges as abovesaid, in all Causes of Mercantile Dispute, or Actions of Damages, where the total Amount, Sum, Dealing, or Matter of Account, Agreement or Transaction between the Parties may exceed Fifty Pounds ; and from the second List or Jury Book, where the total Sum as abovesaid may not exceed the said Sum of Fifty Pounds.

Juries to be taken in Rotation.

Art. 19. Provided always, That the said Juries so to be struck from either of the said Lists, shall be taken from the same in Rotation, and following each other, by commencing at that Part of that List from whence the former or Preceding Jury was struck or taken ; and also that in all Causes that may appear to the Court before which they are to be had to be of Intricacy, and that ought to be tried by a Jury from the first List, although the Sum or total Amount may not exceed Fifty Pounds, the Judges of such Court may permit and order the Jury to be struck from the first List, the Party applying for such Jury paying the Difference of Fees between Jurors from the first and the second Jury List or Book.

Challenge, or Exceptions to Jurors to be determined agreeable to the Laws of England.

Art 20. That all and every Challenge, or exception to the Pannel, or any particular Juror returned thereon, shall be taken, made and determined upon in Open Court, and conformable to the Laws of England ; the Jurors serving on Special Juries as abovesaid, and struck from the first List or Jury Book, shall have and receive Two Shillings and Six pence each for every Verdict to be made and delivered, and before returned into Court ; and Jurors struck from the second List or Jury Book, One Shilling each for every Verdict in Manner as aforesaid.

List of Jurors to be returned by the Sheriffs in the Month of June Yearly.

Art. 21. That Lists of Jurors, in the manner prescribed by the preceding Articles shall be made, by the Sheriffs returned into the several Courts, and formed in the manner abovementioned in the Month of June in Every Year.

Penalty on Jurors not attending.

Art. 22. That all Persons being duly summoned to attend in any of His Majesty's Courts of Common Pleas to serve as Jurors as abovesaid, and neglecting or refusing so, to do shall be liable to, and may be fined by the

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Said Courts respectively, in any Sum not exceeding Five Pounds, and not less than Ten Shillings, to be levied by Warrant of Distress on the Goods and Chattels of such Person so refusing or neglecting to attend, and to be paid to His Majesty's Receiver General for the public uses of the Province.

Persons exempted from Serving on Juries.

Art. 23. That the Members of His Majesty's Council, the Officers of His Majesty's Courts, Officers of the Customs, Naval Officers, Persons employed in the Service of the Post Office, Physicians and Surgeons, and Officers employed in Military Service, shall be exempted from serving on Juries.

Appeals from definitive Judgments.

Art. 24. The Party meaning to Appeal from any definitive Sentence or Judgment of any of the Courts of Common Pleas shall sue out a Writ from the Court of Appeals, tested and signed by the Governor, Lieutenant Governor, or Chief Justice, stating that the Appellant complains of being aggrieved by the Judgment, and therefore commanding the Judges of the inferior Court, or any Two of them, to send up the Original Papers and Proceedings found in the Records or Registers of the Court concerning the same. Such Writ, when presented to any of the Judges of the Court below, shall be allowed by him, if the Appellant has given the requisite security, which Security is hereby understood to be Personal Security, or Bail by Justification, any Law, usage, or Custom to the Contrary notwithstanding. Provided nevertherless, that an Appeal may be had and obtained in manner abovesaid from any Interlocutory Sentence or Judgment which may carry execution by ordering something to be done or executed that cannot be remedied by the final sentence or Judgment, or whereby the Right of the matter in Contestation between the Parties may be in part decided, or whereby final hearing and Judgment may be unnecessarily delayed: Provided always, That such Appeal shall not be granted and allowed, except upon Motion made in the Court of Appeals for that Purpose, and a Rule served upon the other Party, or his Attorney, to shew cause why a Writ of Appeal from such Interlocutory Sentence or Judgment should not be granted :—And it is hereby ordained, that a Rule so served shall have the Effect to stay Execution upon such Interlocutory Sentence or Judgment, till the determination of the Motion for such Appeal ; and if the Writ of Appeal shall be awarded thereupon, and allowed by the Judges in manner as aforesaid, the Clerk of the Court shall proceed to comply with the Order of the Writ, and the Judges, or any Two of them, shall make their Return as therein commanded.

Appellant to file his Reason of Appeal in Eight Days.

Art 25. If the Appellant does not, within Eight Days after the Return of the said Writ, and the Transmission of the Proceedings, file his Reasons of Appeal, the Appellee shall obtain a Rule or Order, that unless the Appellant's Reasons of Appeal are filed in Four Days, the Appeal will be dismissed: And if the said Reasons of Appeal are not filed within Four Days after Service of the said Rule, on the Appellant or his Agent, the Appeal shall be accordingly dismissed with Costs.

Appellee to file his Answers in Eight Days.

Art. 26. Within Eight Days after the Reasons of Appeal are filed, the Appellee shall file his Answers thereto; or if he neglects so to do, the Appellant shall obtain a Rule or Order, that unless the Appellee file his Answers within Four Days, he will be precluded from filing them after that Period, and if his Answers are not filed within Four Days after Service of such Rule on the Appellee or his Agent, he shall accordingly be precluded from filing them, and the Court will proceed to hear the cause on the Part of the Appellant and proceed to Judgment therein without the Intervention of the Appellee.

The Court upon good Cause Shewn may prolong the time above allowed.

Art. 27. The said Court of Appeals nevertherless shall and may, upon Application made, and good Cause shewn by either of the Parties, (Notice being given to the other) prolong the Time allowed for filing either the Reasons of Appeal or Answers thereto ; and in Case the Court shall not be sitting

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at the time when such Reasons or Answers ought regularly to be filed, the Party neglecting shall apply to the Court at the next sitting thereof, and shew his Reasons for such neglect; and if the Court finds them insufficient, it will as the case may be, either dismiss the Appeal or proceed to hear it without the Intervention of the Appellee as above directed.

Day to be fixed for hearing the Cause.

Art. 28. When the Reasons of Appeal, and the Answers thereto, are filed, the Court shall, on the Application of either of the Parties, fix on such Convenient Day for the hearing of the Cause, as to it may seem proper.

Execution to issue in Fifteen Days, if Appeal is not allowed, or Security given.

Art. 29. If the Writ of Appeal is not allowed by one of the Judges of the Court below, and a Copy thereof served on the Appellee, or his Agent, within Fifteen Days after any Judgment given in the Court of Common Pleas, Execution shall issue: Provided always, that in Cases of Appeal from Judgments in His Majesty's Court of Common Pleas in the District of Montreal, Execution shall be stayed for the space of Twenty Days, where the Party meaning to Appeal shall lodge good and sufficient Security in the said Court, within Fifteen Days from the date of such Judgment, to prosecute his said Writ of Appeal with Effect; and that such security shall be taken as in case of an actual Writ of Appeal issued and admitted.

Limitation of Appeals.

And no Appeal shall be allowed or received from the Court of Common Pleas, after the Expiration of one Year from the Date of the Judgment of such Court, save and except such Judgment whereby the Rights of Infants, Absentees, Femes Coverts, or Persons non compos Mentis may be bound.

Of Executions.

Nature of the Execution.

Art. 30. The Execution sued out from any of the Courts of Civil Jurisdiction shall be a Writ issuing in the Kings name, tested and signed, when issuing from the Court of Appeal, either by the Governor, Lieutenant Governor, or Chief Justice, and when issuing from the Court of Common Pleas by one of the Judges of the Court for the District in which it is given, directed to the Sheriff of the District, setting forth the Judgment of the Court between the Parties, and the kind of Execution which the Law, according as the Case may be, shall direct, whether the same be to take the Body, or to levy a Sum of Money out of any one's Goods and Chattels, Lands and Tenements, or to do any Special Matter or Thing whatever. The Date of the Judgment shall be indorsed on every Writ of Execution; and that Indorsement signed by the Judge.

Personals to be first disposed of, and if insufficient Real Estate to be Sold.

Art. 31. In all Cases where Execution shall issue against Real and Personal Estates, the Sheriff shall first dispose of the Personal Property, and if the Proceeds thereof fall short of the Amount of the Judgment, the Real Estate, or so much thereof, as will produce the Amount, shall be Sold for that Purpose.

Manner of selling Personals.

Art. 32. Where Moveables shall be seized by the Sheriff under an execution, he shall cause the seizure to be published at the Church Door of the Parish, immediately after Divine Service, on the first Sunday succeeding such seizure, and at the same Time cause to be proclaimed the Day and Place when and where he means to proceed to the Sale thereof, provided that the place of Sale shall be in the same Parish in which the seizure is made; and provided always that the Sheriff shall not sell Chattels so to be seized and notified, until Eight Days after Notification of Sale as abovesaid. And that at the Request of the Plaintiff the Sheriff may cause Goods and Merchandizes, so seized as abovesaid, to be transported from the Parish where seized to the City of Montreal or Quebec (being in the District where seized) and there to be sold after due Notice as aforesaid; and that Execution so to be issued against Chattels or Personal Estate shall be made returnable at such Day as the Court from whence it may issue shall judge reasonable, and that Execution shall issue against Chattels, or personal and Real Estate, in one and the same Writ, but that such Execution shall be first levied upon the Chattels or Personal Estate, and be returnable as to

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such first levy, yet nevertheless may have force and Effect, and be returnable at a more distant Period as to the second Levy on Real Estate, for the full satisfaction of the Execution aforesaid.

Manner of selling Real Property.

Art 33. When Lands and Tenements shall be seized by the Sheriff under a Writ of Execution, he shall advertize the Sale thereof Three several Times in the Quebec Gazette, to be on some certain Day after the expiration of Four Months from the Date of the first Advertisement, and proclaim the said Sale at the Church Door of the Parish in which the Premisses are situated, immediately after Divine Service, on the Three Sundays next preceding the sale, and cause a Copy of the said Advertisement to be fixed on the Door of the Parish Church; and that Lands in Roture shall be sold at the Door of the Church of the Parish where seized. And the Sheriff is hereby further required to advertize, immediately after the Seizure, that all and every Person having any Claim on Said Lands and Tenements, by Mortgage or other Right or Incumbrance, do give notice thereof at his Office, either before or after the Sale, where the Law makes a Distinction, and to remove all Doubts, the Sale then by the Sheriff, without any other Formality, shall have the same Force and Effect as the Decret had heretofore.

When Two or more Executions issue on Judgments given the same day, they are to be satisfied in the same Proportions unless in case of Oppositions entered at the Sheriff's Office.

Art 34. If Two or more Writs of Execution shall be Issued upon Judgments given the same day, against the same Defendant or Defendants, and so marked on the Writs, such Executions shall have the same Privilege, and be satisfied in the same Proportion: Provided always, that if any Oppositions or Claims may be entered at the Sheriff's Office, either before the Sale of Moveables, or before or after the Sale of Immoveables and where required by Law in the one or the other Case above mentioned, or where the Moveables seized may be claimed by any other Person as to him pertaining, in all such Cases the Sheriff shall return the Same at the proper Periods into the Court where Such Execution issued, that the said Court may, on hearing such claims and Oppositions, and the Parties therein concerned, adjudge them according to Law.

Allowance to the Sheriff.

Art 35. On every Execution the Sheriff shall be allowed all his Disbursements and shall be authorized to charge over and above at the Rate Two and a half per Cent to be deducted out of the Money he levies.

Proceedings in Actions under £10 Sterling.

Art 36. In matters not exceeding or under Ten Pounds Sterling, any Person having a Right of Action against another shall prepare, or procure from the Clerk of the Court of Common Pleas, a Declaration in the following Form, viz.

Declaration

Quebec / Montreal — Day of . . 17. A.B. Plaintiff
C. D. Defendant

"The Plaintiff demands of the Defendant the Sum of
"due to the Plaintiff from the Defendant for which said Sum, "though often demanded still remains due, therefore the Plaintiff Prays "Judgment."

This Declaration shall be filed by the Clerk, who shall make a Copy thereof, and at the Foot of such Copy write out a Summons in the Language of the Defendant in the following Form; viz.

Summons.

"Quebec / Montreal ss. George the Third by the Grace of God of Great "Britain, France and Ireland, King, Defender of the Faith to C. D. "Defendant in the above Action. You are hereby Commanded and "required to pay the Plaintiff A.B. the above mentioned Sum of......... "together with Costs, or else to appear in Person, or by your "Agent, before our Judges of our Court of Common Pleas at the Court "House of the City of Quebec / Montreal on the Day of............. "when the matter of Complaint against you as ascertained in the above "Declaration, will be heard and finally determined, otherwise Judgment "will be given against you by Default. Witness the Honourable

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" one of the Judges of our Said Court of Common Pleas, this " Day of in the Year and " Year of our Reign."

Services. This Summons shall be signed by one of the Judges of the Court and a Copy thereof, and of the Declaration, served on the Defendant Personally, or left at his Dwelling House, or ordinary Place of Residence, with some Grown Person there, and the Person serving the same shall inform the Defendant or such Grown Person of the Contents thereof. If at the Time mentioned in the Summons, the Defendant does not appear (Proof of the Service thereof being produced in Court) the Judges or any one of them, shall hear the Cause on the Part of the Plaintiff, and make such Order, Decree or Judgment, and award such reasonable Costs of suit, as to him or them shall appear agreeable to Equity and good Conscience.

Non-Appearance.

Appearance. But if the Defendant does appear by himself or his Agent, and the Plaintiff or his Agent does not appear, or appearing does not prosecute, or prosecuting fails in his Action, the Judge or Judges shall dismiss the Defendant with Costs. If the Plaintiff makes good his Charge against the Defendant, the Judge or Judges shall give Judgment accordingly and award Costs, and Execution, but the Execution shall not issue until Eight Days after Judgment given.

Judgment.

Execution. The Execution shall go against the Moveables only of the Defendant, which shall be seized by some Person to be for that Purpose appointed by the Court, and sold by him in the manner mentioned in the 32[d] Article of this Ordinance. But the Execution shall contain an Exception of the Party's Beasts of the Plough, Implements of Husbandry, Tools of his Trade, and One Bed and Bedding, unless his other goods and Chattels shall prove insufficient, in which case such Beasts of the Plough, Implements of Husbandry, and Tools of his Trade, shall be sold, but not the Bed and Bedding.

Exception.

Debt to be levied by Installments. The Judge or Judges may, if they think proper, order the Debt to be levied by Installments, provided the Time shall not exceed the Space of Three Months from the day of issuing the Execution.

If Defendant secretes his Effects, or opposes the Seizure of them, Execution against the Body. Art 37. In matters as well above as of under the Value of Ten Pounds Sterling, if the Defendant shall convey away or secrete his Effects, or shall with Violence, or by shutting up his House, Store, or Shop, oppose his Effects being seized, in all such Cases, on due Proof thereof, an Execution shall go against his Person, to be taken and detained in Prison until he satisfies the Judgment, any Law, Usage or Custom to the contrary notwithstanding.

In Commercial matters, Execution against the Body. Art 38. For the Satisfaction of all Judgments given in Commercial Matters between Merchants or Traders, as well as of all Debts due to Merchants or Traders, for Goods, Wares, and Merchandizes by them sold, Execution shall issue not only against the Goods, Chattels, Lands, and Tenements of the Defendant but also, in case they shall not produce the Amount of the Plaintiff's Demand against his Person, to be taken and conveyed into the Prison of the District, and there detained until he pays the Amount of the Judgement, or otherwise settles with and satisfies the Plaintiff, any Law, Usage, or Custom to the Contrary notwithstanding: Provided, that if the Defendant after remaining One Month in Prison, shall make application to the Court, and make an Affidavit that he is not worth Ten Pounds, the Plaintiff shall pay to the Defendant the Sum of Three Shillings and Six Pence weekly for his Maintenance, as long as he shall be detained in Prison at the Suit of the Plaintiff; and in Time of Scarcity the said Court of Common Pleas may in its discretion augment the said Allowance, not exceeding the further Sum of One Shilling and Six Pence per Week; such Payment shall be made in Advance on Monday in every week; in failure of which the Court from whence the Execution issued shall order the Defendant to be released; but the Plaintiff shall not

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be obliged to make such Payment, if he can prove to the Satisfaction of the Court, by which the Defendant stands committed, that the Defendant has secreted or conveyed away his Effects to defraud his Creditors.

Power of Awarding Execution out of one District into the other.

Art 39. When any Person, against whom Judgment shall be given in any of the Courts of Common Pleas shall not have sufficient Goods, Chattels, Lands, or Tenements, to satisfy such Judgment, within the Jurisdiction of the Court wherein such Judgment shall have been obtained, but shall have Goods, Chattels, Lands, or Tenements within the Jurisdiction of the other Court of Common Pleas, it shall be Lawful for the Judge or Judges of the Court wherein Judgment shall have been obtained, to award Execution to the Sheriff of the other District, who after getting the Writ indorsed by one of the Judges of the Court for the District in which the Goods, Chattels, Lands or Tenements are situated, shall execute the same, and make Return thereof, to the Court from whence it issued ; and such Writ and Return shall be by him sent to the Sheriff of the District from whence the Writ was originally awarded, to be delivered into the Court that issued the same. The Sheriff executing such Writ shall be answerable for his Doings relative thereto before the Court from which it was originally awarded, and the Judges of the Court of Common Pleas for the one District may in like manner award Execution against the Body of a Person residing in the other in Cases where such Execution is by the Law allowed ; and the Sheriff executing the Writ to him in such case directed shall convey the Body of such Person into the Prison of the District wherein such Person shall be arrested.

Art 40. That the Ordinance shall continue and be in force from and during Two Years, from the First Day of May next, and unto the End of the Sessions of the Legislative Council which will be in the Year of our Lord 1787.

(signed) HENRY HAMILTON.

Ordained and Enacted by the Authority aforesaid, and passed in Council under the Public Seal of the Province at the Council Chamber in the Castle of S^t Lewis in the City of Quebec, the 21^st day of April, in the Twenty Fifth year of the Reign of Our Sovereign Lord George the Third, &c. &c. &c. and in the Year of our Lord 1785.

By the Lieutenant Governor's Command.

HOPE TO SYDNEY.[1]

QUEBEC 2^d November 1785

MY LORD,

Having had the honour in my Letter of the 24^th ult^o to acknowledge the receipt of Your Lordship's Dispatches inclosing the kings commission of Lieutenant Governor,[2] I have now to acquaint your Lordship that I have this day been sworn into Office and have assumed the Command of His Majesty's Province of Quebec. Business of various kinds that was pending, and which L^t Gov^r Hamilton could with greater propriety expedite and conclude, induced me to acquiesce with chearfulness in his pro-

[1] Canadian Archives, Q 25, p. 220. When Hamilton was dismissed, Col. Henry Hope, who had been acting as Quarter-master General, was promoted to the rank of Brigadier General and received the appointment of Lieut. Governor, as announced in a despatch from Lord Sydney, dated Aug. 20th, 1785. See Q 25, p. 35. As he had been a favourite of Haldimand and a strong opponent of Hamilton, the policy of the Government, as may be gathered from this despatch, was immediately changed on his assumption of office.

[2] It was in his letter of Oct 21st, that he acknowledged this dispatch from Sydney. See Q 25, p. 199.

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posal not to fix upon an earlier day for his resigning the seals of the Province into my hands.

His Majesty and his Ministers, My Lord, are no strangers to the causes which in the years 1774 and 1775, assisted by national and religious prejudices (truly laudable in other parts of the empire) rendered the antient subjects residing in Canada, especially the natives and Emissaries of the other colonies, averse to the Act of Parliament which regulates the Province of Quebec.

It is equally known to His Majesty and Ministers, how far the same causes at the re-establishment of Peace, and after the departure of Gov^r Haldimand from the Province last year, engaged this same description of People to establish Committees as in 1774, and to renew Petitions against the present constitution of the Colony.[1] To these causes, My Lord, was added a spirit of Party and faction fomented by various interests and resentments, and which I am warranted in pronouncing had little foundation in views for the public happiness or the liberty and welfare of the people.

It shall be my study therefore, Be assured My Lord, to discountenance and checque this spirit as far as in me lies, and to endeavour by moderation and impartiality to bring back all His Majesty's subjects to a sense of their duty and to a desire to promote the Tranquillity of the Province. The approbation of My Gracious Sovereign, the noblest reward which a faithfull and zealous subject can propose to himself, will be a constant inducement to persevere in the line of conduct which has procur'd it—To merit that approbation is my greatest ambition.

At the same time that I am sensible of the difficulties of my station and present Situation, I have satisfaction in informing Your Lordship, that the contagion of party and the desire of innovation (notwithstanding the Countenance which they have had, and the effects produced by the Emissaries who were sent by the Committees thro' many of the parishes,) can be said to have made but little progress amongst the Canadians in general. Those of them who have join'd in Petitions addresses &c^a are chiefly Burghers and shop keepers in the Towns of Quebec and Montreal, dependent upon the British Traders in their circumstances and with a very few exceptions by no means respectable in their characters. The Noblesse, the Proprietors of Lands and the secular Clergy, are sensible I believe of the advantages granted them by the Act of Parliament and consequently wish ardently the continuance of it. Bigotry and the influence of the Regular Clergy viz: "of the Seminaries of Quebec and Montreal and of the other Religious Communities made some respectable people among the Canadians join at first in the mission of Mess^r Adhemar and De Lisle, in consequence of the expulsion from the Province of two Priests who were sent from the seminary of S^t Sulpice at Paris; but they no sooner found that this measure was perverted to civil and Political purposes, than they became sensible of their error; and in the Petition to the King (of which Major Ross was the Bearer) they testified their disapprobation of an House of Assembly and the innovations consequent upon it.[2] I would upon this occasion be more explicit in my sentiments on the present system, if I did not know that His Majesty and Ministers may have the most ample information on that head from the General Officers who have since the conquest of the country had the honor to serve as Governors in it—The Generals Gage, Murray, Sir Guy Carleton and Gov^r Haldimand are in England; their abilities and experience render them in an eminent degree competent to judge of the system which is best calculated to secure this Country, to promote the happiness of the people and to render it useful to Great Britain.[3] Permit me only, My Lord, to suggest

[1] Referring to the petition of Nov. 24th, 1784, and the work of the Committees of Quebec and Montreal in drawing up the Plan of a House of Assembly, and appointing an agent in London. See pp. 502 & 510 and note 1, p. 510.

[2] See p. 517.

[3] General Haldimand on his return to England drew up a memorandum respecting public matters in the Province of Quebec, which he submitted to the consideration of Lord Sydney. Among the topics discussed were those of Civil Affairs and Deputies from Canada. Under these heads he had this to say:—"6th. The Spirit of Opposition to every Measure which I have proposed in, or out of Council for the King's Service, has been so strongly manifested by some Members of the Legislative Council and by the Attorney General, particularly since Lieut. Governor Hamilton's arrival at Quebec, who has thought fit to place Himself at the Head of that Party, and the Infection has been so industriously spread by means of the Clergy, and other Agents, that I despair of seeing that mutual Confidence and Harmony subsist in the

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with great deference an Opinion that provided the present system is persevered in without any further Parliamentary Interference, an Instruction or permission should be given to His Majesty's Governor or Commander in Chief for the time being, to recommend more than six Canadian Catholics for seats in the Legislative Council—for as this Body has authority to make alterations in the Laws, customs and usages of Canada the measure appears to me only consonant to equity and could not fail to have the best effects in reconciling the people to such alterations as it may be necessary to make, in the enacting of which an equal or at least a more proportionable number of their Countrymen shall have a voice. Some transactions in the last session of the Legislative Council to my knowledge created these just reflexions in the minds of many of the most moderate and intelligent Canadians—and I have reason to think that such an additional proof of His Majesty's Generosity and confidence would give great satisfaction to the people of Canada, as it would in their opinion secure to their Posterity the Possession of their religion, laws and liberty. Another measure which in my humble conception will attach the Canadians still more firmly to His Majesty's Government, would be to establish a corps under certain regulations for the service of the Province officer'd chiefly by Canadians; which would hold out some provision for the younger branches of good families, (the want of which or of some similar resource I have heard them frequently lament,)—might be made to serve many useful purposes—would restore that martial spirit so congenial to their sentiments—and which would be also a Standard for the rest of the Country to repair to, when an enemy might threaten the frontier.

I am aware My Lord that the Loyalists settled between Cataraqui and Montreal have been incited to ask, and have been encouraged to expect a Constitution of Government different from that establish'd in the other Parts of the Province, and that to meet this wish of theirs without at the same time creating jealousy in the other subjects of the Province will be the most embarassing point for Government in England to settle—but their Numbers are not so considerable nor their desire for a change of the present System so firmly rooted (I should hope) as to render such a measure necessary at least immediately; as otherwise I foresee that it will create a reasonable source of complaint among the Canadians.

I will in a future letter and when I shall have received the dispatches and Regulations announced to me in Your Lordships letter of the 16th August[1] have the honour to write more fully my sentiments of these and other matters

I have the honour to be My Lord with the utmost respect

Your Lordships

most Obedient and

faithfull humble servant

HENRY HOPE

The Right Honble Lord Sydney &c &c &c
(original)

Council, or amongst the People, which is so indispensably necessary to the King's Service and well being of the Province, while these gentlemen remain in Office. The Instances I allude to are many, some of them, particularly the last, are upon record in the Minutes of the Council—This party is composed of the Lieut. Governor, Messrs Finlay, Grant, Allsopp, Cuthbert, DeLery and Levesque." * * * * * "7th. It is highly necessary to discountenance the Correspondence carried on by the People stiling themselves deputies from Canada, and supported by Mr. Maseres and others, applying for a change of Government by the Establishment of a House of Assembly and other changes entirely contrary to the Interests of the King and Happiness of His good Subjects in that Province. The Clergy, whose devotion to the Interests of France has of late been strongly manifested, are deeply engaged in this Party, & unless Measures are speedily taken to cheque the progress of it, so as to deter the Clergy from persisting, it will ultimately, be necessary to withdraw some of them from that Country.—" Q 25, pp. 306-308. Carleton afterwards submitted a Memorandum of 20th Feb. 1786, which showed a very great change of mind on his part, as he recommended the good policy of removing, unasked, every grievance or burden which would render the position of those in Canada inferior to that of their neighbours of the United States, in order to render any change of allegiance on the part of those in Canada undesirable. See Q 26—1. p. 53.

[1] Here again he has mistaken the date of the letter referred to, which was that of Aug. 20th, already mentioned in note 1, p. 538, in which his appointment was announced and various instructions promised. See Q 25, p. 35.

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MEMORIAL OF BRITISH MERCHANTS TRADING TO QUEBEC.[1]

The Committee of Merchants Trading to Quebec request the honor of waiting on Lord Sydney as early as convenient, respecting the inclosed Regulations proposed for that Province.

New York Coffee house
8 February 1786

At a General Meeting of the Merchants of London Trading to the Province of Quebec held at the New York Coffee House the 24th January 1786.

We the said Merchants whose Names are underwritten for ourselves and agreeable to the urgent and reiterated complaints and Applications of the Inhabitants of the province of Quebeck think it necessary and expedient that a Representation be made to his Majesty's Ministers of the distressed and deplorable State of that Province stating and submitting to them the following Measures which we humbly apprehend to be most likely to prove effectual for quieting the Minds of his Majesty's subjects there extending and securing the Commerce and protecting the property of the British Merchants.

Vizt

Laws Constitution House of Assembly

The present Code of Laws, if the mixture of French and English Laws may be so call'd, not being well understood the Execution of them is subject to much Difficulty and Uncertainty. among other Inconveniencies persons often claim the Right of both and take the Advantage of that which best suits their purpose by these and other means the payment of Debts are evaded and right and property is rendered uncertain and insecure. The Losses the British Merchants have suffered from this evil within the last three years has occasioned the ruin of many and such is the present want of Confidence and want of Credit in consequence of these Disasters, that Common Ruin and General Distress must ensue if some effectual Remedy be not immediately applied.

From the Petitions[2] delivered last Year to the Right Honorable Lord Sydney signed by upwards of 1800 of the principal Inhabitants from the Letters lately addressed to us from the Committees of Quebec and Montreal on this Subject (Copy's of which are hereto annexed)[3] And moreover from our own Knowledge and the particular Information our Connections in that Country afford us, we are clearly and unanimously of opinion that for the Relief and Redress of these evils and the many other Defects of the present Constitution of that Government a provincial Legislature or House of Assembly Established on the principle as in every other British Colony in America will be effectual.

We are equally confident that it is the earnest wish and desire (whatever may have been represented to the Contrary) of the principal as well as the Generality of the Inhabitants of the province both old and new subjects (and to which the Loyal Refugees have also added their testimony by Petition)[4] to be governed by British Laws to be made and administered according to the British Constitution—They found their Claim to it not

[1] Canadian Archives, Q 26—1, p. 33. The points dealt with in this memorial indicate not only the chief political reforms required but also the chief points in Canada's external relations at this time. They foreshadowed the discussion for the next three years, and outlined the features dealt with in the extensive Report, or series of Reports of 1787,—the outcome of Carleton's instructions to undertake a systematic investigation of the condition of the Province.

[2] Referring particularly to the petition of Nov. 24th, 1784, presented in the spring of 1785; see p. 502.

[3] See below pp. 544 and 545.

[4] See p. 524.

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only as British subjects but under his Majesty's special Proclamation of the 7th October 1763.

We conceive no other Form of Government will satisfy and quiet their Minds secure their Rights & protect our property—We therefore feel it our Duty to recommend in the most earnest manner this Measure to his Majesty's Ministers as the most essential for the Security and Prosperity of this valuable province and that that obnoxious and impolitick Law[1] the act for subjecting the British Subjects of Canada to a Government so repugnant to the Ideas of Britons and the British Constitution and was so often cry'd out against as one of the Causes of the Defection of the Neighbouring Colonies may no longer disturb the peace of the Loyal Subjects of this province

Vermont

This new state which is already become very populous and which has no Sea ports but through this province must require considerable quantitys of European Manufactures for which to avoid the Duties and heavy Charge of transporting them by Land through the American States would naturally have recourse to Canada and prefer the British Manufactures to which they have been accustomed were the Communication allowed—We do not conceive such Communication under proper restrictions could be attended with any evil on the Contrary it must be productive of great Trade and Riches to the Province of Quebec and in consequence the increase of British Navigation and Commerce

Newfoundland & The Corn Trade

Agriculture has been constantly improving in Canada ever since the Country has been under British Government in so much that the Exportation to the European Markets amounted the year preceeding the last War to upwards of Three hundred thousand Bushels of Wheat besides considerable quantitys of Flour and Biscuit sent to Newfoundland and the West Indies and although the necessary Consequences of the War was a temporary Impediment to its progress it has speedily revived again with the Re-establishment of Peace and the Crop of the last year we have undoubted Authority to assert will afford upwards of Two hundred Thousand Bushels of Wheat for Exportation—There can therefore be no doubt of this province being able sufficiently to supply the Newfoundland Fishery with Bread and Flour. The Merchants concerned in that Branch of Trade having particularly desired as the most essential means for the Security of the British Fishery to be precluded from any Commerce or Communication with the American Independent States alledging that the Licences now held out to them for importing provisions from thence will be a Cloke for purposes prejudicial to the Fishery and will be availed of by none but what have contraband views since such provisions can be had from the Mother Country or from Canada cheaper than from any of these States We therefore think it our Duty to second the request of those Concerned in the Newfoundland Fishery in order that the Province of Quebec may enjoy the Advantage of supplying its Sister Colony with those Articles of Provision which it is in its power so amply and effectually to do.[2]

Fishery.

That as the Merchants concerned in the Trade to Newfoundland have applied to Government for certain Regulations with respect to Duties Bounties &c to countervail the Bounty lately granted by France for the Encouragement of the French Fisherys we conceive it will be equitable and equally beneficial to this Country that the same Advantages that may be granted to the Newfoundland Fishery should be extended to this and the other British Colonies in America.

Wine Fruit & Olive Oil

The Importation of these Articles direct from the places of their growth in Spain and Portugal is also asked by the Newfoundland Merchants—We

[1] Referring to the Quebec Act.

[2] The question of the Newfoundland trade and fisheries was a subject of vigorous and prolonged discussion in the British Parliament and press at this time.

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the Merchants Trading to Quebec (who have repeatedly petitioned the Lords of the Treasury) therefore now renew our Application on this Head—[1] The Inhabitants of Canada when under the French Government were accustomed to Red French Wine as their Common Beverage—the Duties on French Wine in England being so excessive high, the Red Wine of Catalona which is the nearest in point of quality was introduced from Two thousand five hundred to Three thousand Hogsheads of it have been imported into Canada annually—The great Expence of Freight and other Charges attending the bringing this Wine to England to Land, clear and reship for Canada is almost equal to the first Cost and Duty the original Cost being but thirty @ thirty five shillings p hogshead and the Duty Seventeen shillings and sixpence. It has been and must be the means of introducing a fraudulent Trade by which a great part of the Consumption is and will be supplied in French Wines which Trade will now be facilitated by the Independance of the neighbouring States and therefore we conceive in point of Revenue as well as for the Advantage of this Colony it would be proper to permit the Entry of Wine direct from Spain and Portugal on payment of the same Duties that would remain on it when exported from Great Britain—Fruit and Olive Oil we are also of Opinion should be permitted direct from the places of their Growth that the Inhabitants of British America may not be deprived the Advantage of these Articles the former of which in particular is in its Nature too perishable to undergo a double Voyage.

Bounties on Oak Timber Staves & Other Lumber

The Bounties on the Importation of Oak Timber Staves and other Lumber having expired some years ago, this Branch of Trade has in Consequence of this and the Interruption of the War been almost totally discontinued—The Renewal of the said Bounties for a limitted time would we conceive be productive of the most Salutary effects in extending the Consumption of our Manufactures employing many Ships and saving great sums of Money annually paid to Foreigners particularly for Staves which are now imported only in Foreign Ships from Hamburgh and Stetin on this Subject we refer to our Memorial presented to the Lords of the Treasury the Beginning of the Year 1785.[2]

Hemp

While this province was under the Government of France—Considerable Quantitys of Hemp were raised—The Climate being extremely favourable and many of the Lands peculiarly adapted to the Growth of this Article we are of Opinion if a Bounty equal to what was given formerly to the American Colonies of £8 p ton was extended to this province it would be the means of reviving and promoting the Cultivation thereof—to the mutual Advantage of both Countries

The Trade from Montreal to the Indian Country by far the most considerable in the province is greatly impeded for want of proper Vessells to transport the property over the Lakes the same during the War having been restricted to Kings Vessels which still continues And we are of opinion this inconvenience can only be removed by allowing the Traders to build Vessels for themselves under such Regulations as may be thought proper this was permitted before the War and no Inconvenience was found to arise there-from on the Contrary it was a great Security to the Kings Garrisons for in case of any accident to the Vessels—they have recourse to those belonging to the Traders[3]

[1] Under the Colonial policy embodied in the Navigation Acts of the time, not only must such limited trade as was permitted with foreigners be conducted exclusively in British ships, but the trade must pass through British ports and not directly between a foreign country and colonial ports.

[2] The Colonial timber trade and the bounties thereon grew to be a matter of much controversy for the next half century.

[3] The ostensible object of prolonging the regulation adopted during the Revolutionary War, of requiring all transport on the upper lakes to be conducted in government vessels, was to prevent the fur trade from falling into the hands of the Americans. The Canadian merchants engaged in the trade continually protested against the regulation as unnecessary, expensive and vexatious.

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We do appoint Mr. Hunter Mr. Rashleigh Mr. Ellice and Mr. Gregory to state these Matters to his Majesty's Ministers and to request their Concurrence to such Laws as may be necessary for obtaining the Objects desired—

Rob^t Hunter	Jn^o Brickwood
Rob^t Rashleigh	J. Strachan. J Mackenzie & Co
M & I Gregory & Co	Hen^y Callender
Phyn & Ellice	Jn^o Paterson
Jn^o Shoolbred	Isaac Todd
Dyer Allan & Co	Elias Lock
John Strettell	

LETTER FROM MERCHANTS OF MONTREAL.[1]

Montreal 2^d Novem^r 1785

Gentlemen

We had the satisfaction of receiving on the 30^th July your esteemed favor of the 26^th May, to which we should before now have made Answer, but the hurry of private Business which in the shortness of our Summer season requires the most Assiduous application, & the desire of procuring the co-operation of the Loyalists, in order to transmit you a Petition from them by the fall ships, occasioned the long delay.

In conformity to your recommendation, and in Justice to that respectable and Numerous body of new Settlers in the upper parts of the Province, the substance of our petitions was thrown into a more concise and general form, and transmitted to them for perusal and approbation; but owing to a Petition which last year had been presented by their Agents in London,[2] they are of Opinion (but without finding any fault with the Language or Spirit of ours) that it will be more proper for them, to wait the result of that Application, than to join in Another, le'ast their Interference should in some degree Militate against the Measures w^ch their Agents may be pursuing.—We shall transmit you Copy of the Advice which one of the most respectable and Intelligent amongst the Loyalists received from London on this Subject.

The Letter is dated 15^th June 1785 saying—

"The Gentlemen from Canada now in London, who intend settling in the upper "parts of the Province (the writer of that Number) have presented a Petition to his "Majesty, praying for an Alteration of the present mode of Government, and the "Tenure by which they hold their Lands.—or that the upper parts of the Province includ-"ing all the new Settlements, may be erected into a new Province, with a Government "similar to the Royal Governments before the Revolution in America; but no Answer "has as yet been given, I suppose it will be laid before the two Houses of Parliament "for their consideration.

From this Paragraph you may see that their Views are directed nearly in the same Manner as our own; and we should think that by Uniting with their Agents at home, it might prove one of the Most effectual Measures for Obtaining our earnest desires,—a House of Assembly.—However supine and indifferent about modes of Government the Canadians may be esteemed, they Assuredly would consider themselves highly insulted and wronged, were they to see a part of the Province of which they are Inhabitants erected into a New and free Government, whilst they were continued, under the disgraceful System of being excluded from the smallest participation in their own Legislation.—

From the different Conversations you mention to have had with Lord Sydney on this Business, we had hopes that some steps would have been taken by him in Order to

[1] Canadian Archives, Q 26—1, p. 42. English and French versions of this letter are given in parallel columns, the English copy being signed by the English merchants and the French copy by the French merchants.

[2] See p. 524.

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procure the free Suffrages of the People here; but the Measure lately adopted of recalling Lieu[t] Governor Hamilton and placing the power of Governor & Commander in Chief as well of the Province as of the Troops in the hands of a Military Gentleman,[1] indicates so strongly the Aversion of the Minister from those means, as to preclude every hope that the People at large will be called upon to give their Voice with freedom,—for how many are to be found even amongst the higher and more independent Classes of Mankind who will give their opinion freely in Opposition to that Person who has the Power of commanding them at pleasure; fixing without control the duration of their Servitude and the recompence of their Labour And, to enforce his Orders has a Military Force under his own immediate direction—You will easily suggest that the present is not a fit season for obtaining new Signatures, but tho' we shall wait with patience for a discussion of our Petitions, we shall never lose the Object of them in View.

Our Requests are Rights belonging to us as British Subjects which sooner or later will We hope be granted; for we cannot allow Ourselves to think that the good sense of the British Senators will for ever continue the unwise and disgraceful difference which at present distinguishes this Province from all the other Colonies belonging to Great Britain—

It affords us the highest satisfaction that your opinion coincides with Ours, and that you are resolved to prosecute the prayer of our Petition with firmness and Temper.—

We are happy that you consider the welfare of the Province so connected with your own Interests as to render both Objects of your Steady pursuits and we trust we shall derive most effectual assistance through your Means towards the Completion of our wishes.—We are with the greatest Esteem & Respect

Gentlemen

your most obedient & very humble Servants

James McGill	Bouthillier
Simon McTavish	Jn De Lisle
Benj[n] Frobisher	P[re] Guy
Rich[d] Dobie	Dumas
James Finlay	S Martin
Nicholas Bayard	M[ce] Blondeau
	Perinault
	P[re] Foretier
	Jf. Perrault
	Jh. papineau

To Mess[rs]
Phyn & Ellice
Robert Rashleigh & Co
J Strachan J McKenzie & Co
Dyer Allan & Co
Rob[t] Hunter
John Strettell
John Paterson
London

ENDORSED: In letter from Committee of Quebec Merch[ts] of 8. February 1786

LETTER FROM MERCHANTS OF QUEBEC.[2]

Quebec 9 Nov[r] 1785

Gentlemen

We received your favor of the 26[th] May last Concerning the Petitions from this Province transmitted you last Spring—And are sorry to see that Ministry seem to be inimical thereto—

[1] Brigadier General Henry Hope. See note 1, p. 538.

[2] Canadian Archives, Q 26—1 p. 48. This also is given in English and French; the English copy being signed by the English merchants and the French by the French merchants.

We intended applying to the Country parishes to procure more Signatures to these Petitions—but as you mentioned in your Letter that Government meant to send out orders that the Sense of the whole people should be taken on the Substance of them[1] We thought it better to wait for that General decision, well Convinced it would turn out in our favour—The Arrival of the Antelope packet awaked us from that delusive Dream The removal of Mr. Hamilton from the Government and placing the Civil and Military power in the hands of the same person[2] Convince us that the Ministry mean to oppose any Steps we should take.

We explained to you in our Letter of last Spring the nature of the Counter Petition[3] —And we Cannot yet persuade ourselves that the Minister will produce it. The promoters of it in this Country conducted it in such a private manner—that we never could find out who signed it. If it is produced we will thank you for a Copy of the Names that are at it, having reason to suppose that undue means were used to procure Signatures—

We inclose you Letter from the Committees of Montreal they have so clearly expressed our Ideas that we have very little further to say on the subject—

As the Committee of this place we return you our thanks for the trouble you have already taken in the Affair—And hope you will pursue it with that Steadiness which the importance of the fate of a whole Province where your own Interests are so deeply engaged demands.

It is likely the Constitution of the Province will be absolutely fixed in the Course of this Winter—every exertion therefore on your part will be necessary to procure for us that freedom we so earnestly desire, which is the birth-right of every British Subject and which is so essential to the welfare and prosperity of the Country The people here look up to you for Support and they hope you will be able to procure the Aid and Assistance of the City of London and of the other great Commercial Towns of the Kingdom to preserve this province, now the most valuable on the Continent of America belonging to the British Empire, from being kept in ignominious Slavery

We request you will introduce our Petitions at the opening of this Sessions into the two Houses of Parliament and instruct those Members that Carry it up to insist positively on the prayer of the Petition for a House of Assembly We wish the Sense of the House may be taken on that point having great Confidence on the Patriotism and Public Spirit of the British Senate—Many of its Members have already stood forth in our favour and demanded the Repeal of the Quebec Bill.

We think it will be necessary to support our petitions by the Examination of such Gentlemen from this Country as are in London at the Bar of the Two Houses of Parliament

We flatter ourselves our late Worthy Lieut. Governor Hamilton will give a just report of our Conduct in the Affair and that so far from Stirring up Sedition and disturbance in the Province as has been insinuated[4] We conducted every thing relating to these Petitions with the greatest Harmony and Moderation

We have the Honour to be with great Respect

Gentlemen

Your most Obed[t] Hbl[e] Servt[s]

James Johnston	Deschenaux pere
Adam Lymburner	L[s] Germain fils
Robert Lester	L[s] Turgeon
W[m] Lindsay	Dénéchau
Jn[o] Purss	Dubau
John Antrobus	Ch. Pinguet
Ch:	Louis Dumere
	Perrault l'ainé
	Pommereay

[1] See despatch of Sydney to Hope which follows this document, as also the references to this matter in the debate on the bill introduced by Mr. Powys, M. P., given in note 2, p. 520.

[2] See note 1, p. 545.

[3] See p. 511.

[4] As in Hope to Haldimand; Q 24—2, p. 386; and Haldimand to Sydney, see note 3, p. 539.

Mess[rs]

Rob[t] Hunter
Phyn & Ellice
Robert Rashleigh & Co
J Strachan J McKenzie & Co
Dyer Allan & Co
John Strettell
John Paterson
& others

ENDORSED: In Letter from Committee of Quebec Merch[ts] of 8 Feby. 1786.

SYDNEY TO HOPE.[1]

WHITEHALL 6[th] April 1786

Lieutenant Governor Hope.
Quebec.

SIR,

The Season of the Year not having admitted of a direct communication with Quebec since you were invested with the Office of Lieu[t] Gov[r] of that Province, but through Channels which were at best very precarious, I have deferr'd till this moment acknowledging the receipt of your Letters from 1 to 10.

Before I enter minutely into the several subjects contained in those Letters, I cannot omit to acquaint you, that His Majesty upon a perusal of them express'd himself well pleased with the clear and distinct manner in which the several points of business are arranged; and I may farther add, for your satisfaction, that your sentiments upon Matters in general relating to the Province are directly correspondent with the Opinion entertained by His Majesty's Servants here.

The Affairs of the Indians have lately been a Subject of much Consideration — Joseph Brant, who arrived in the Packet with the late Lieu[t] Governor, has been charged with the transaction of two points of Business;[2] the first to demand restitution for Losses sustained by the depredations of the Americans during the War; and the second, and more material Object, to be satisfied how far they might depend upon the support of this Country in case they should be engaged in Disputes with America, respecting their Lands.—

With regard to the first of these points, His Majesty's Ministers have every reason to think, that it has been concluded in a manner that will be entirely satisfactory to the Indians, and they cannot but conclude that the liberal manner with which this application has been treated, must impress them with a very favorable Opinion of Our friendly disposition towards them. The Losses of the Mohawks according to the Schedule certified by Sir John Johnson, and Lieu[t] Colonel Claus, amount to about £15,000 Sterl[g]. in which are included those sustained by Joseph Brant and his Sister. It has not, however, upon many accounts been thought adviseable to admit their right to Compensation for Sufferings, which are really nothing more than the usual effects of War, and which they have shared only in common with His Majesty's Subjects, But it has nevertheless been judged expedient, not only to gratify them for their former Services, but to endeavor to secure their future friendship and confidence. Upon this ground a Sum equal to the amount of the Losses sustained by Joseph and his Sister has already been paid to him, to enable him to dispose of it to advantage in the purchase of Merchandize previous to his Departure, and Assurances have been given that a favorable Attention will be shewn to the Claims of the rest of the Indians still continuing attached to this Country, who have been Sufferers in the same Way.

[1] Canadian Archives, Q 26—1, p. 73. Indian affairs were in a very critical condition at this time, there being once more, as in the days of French and English rivalry, two powers seeking to obtain a predominant influence with the Indians. This despatch indicates the policy of the British Government at the time.

[2] See Brant's communication of his credentials to Sydney in London, Jan. 4, 1786. Q. 26—1, p.1.

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Notwithstanding the Reports which have been circulated by the American Deputies sent into the Upper Country, His Majesty's Ministers are of Opinion, that they will hardly attempt by force to remove the Indians whilst they continue united, from the possession of the Lands which they at present inhabit within the Territory to which His Majesty, by the late Treaty of Peace, has relinquished the Sovereignty, much less to commence Hostilities for the Possession of Detroit, whilst there can remain even a probability that the Indians will not lend their Assistance in endeavoring to effect it.

His Majesty's Ministers observe, that the Meeting between the Deputies from the several Tribes, and the Deputies from Congress will take place some time this Spring, though probably not till after the arrival of Joseph Brant, and much will depend upon the turn which Matters will then take. His Majesty's Ministers rather imagine that no Disputes will arise at this Meeting but that the Americans will leave them in the possession of their Hunting Grounds until a more favorable opportunity shall hereafter offer for effecting the purposes which it is supposed that Congress have ultimately in view, and if that should be the Case no difficulties will immediately occur; but if contrary to their expectation the Indians should not accede to any Proposals that may be made to them by the American Deputies, or cannot be prevailed upon peaceably to accept of the Asylum already directed to be offered to them, within the Province of Quebec, Our Situation will in some degree become embarrassing. To afford them open and avowed Assistance, should Hostilities commence, must at all Events in the present State of this Country be avoided; But His Majesty's Ministers at the same time do not think it either consistent with justice or good Policy entirely to abandon them, and leave them to the mercy of the Americans, as from motives of resentment it is not unlikely that they might hereafter be led to interrupt the Peace and Prosperity of the Province of Quebec. It is utterly impracticable for His Majesty's Ministers to prescribe any direct line for your Conduct should matters be driven to the extremity, and much will depend upon your judgment and discretion in the management of a Business so delicate and interesting, in which you must be governed by a variety of Circumstances which cannot at this moment be foreseen.

The inclosed Copy of a Letter to Joseph Brant, in answer to his representation, will explain to you the extent of the Engagements entered into on this Side of the Water, with which he will proceed in the course of a few days to meet his Brethren, and from his professions of Attachment to this Country, His Majesty's Ministers are led to expect that he will from time to time furnish you with the earliest notice of any thing material that may occur which you will communicate to me in the most expeditious way, for His Majesty's Information, that Instructions may be transmitted to you for your guidance upon such measures as it may be judged adviseable to adopt.

His Majesty's Ministers are well aware of the Efforts that have been made by a certain description of People to raise Discontents in the Province of Quebec, and to bring forward Petitions to the Throne against the present constitution of the Colony, But notwithstanding these proceedings, no measures whatever are intended to be taken for a change of the System of Government, until Sir Guy Carleton shall have consulted the Opinion of the Province thereupon, and clearly ascertained that such a Change will be attended with material advantage to its general Interests and Happiness.—His Majesty feels the strongest disposition to give His Canadian Subjects every proof of His Confidence, and will forthwith take under His Royal Consideration the Measure you recommend of increasing their Numbers in the Legislative Council[1], which indeed had been in contemplation previous to the receipt of your Letter upon that head.

The flourishing State of the new Settlements affords His Majesty great satisfaction, not only on account of the Advantages which the Province in general will derive from so valuable a Body of People, but from an interested concern for the Welfare and Happiness of Persons who from their Loyalty and Attachment to His Majesty's Government have merited His Royal Countenance and Protection. The Lords of the Treasury I hope will provide the additional Supplies which you recommend for their Subsistence, and I have no doubt but you will receive Instructions from their Lordships on that point by this conveyance.[1]

[1] See Hope to Sydney, p. 538.

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However desireable it might be to encrease the Military Force in the Province of Quebec, I cannot at this moment encourage you to expect that the Measure will be adopted from the weak State of the Army remaining in this Kingdom, and the various Services which call for their execution; Your Suggestions relative to the raising Colonial Regiments[1] it must be allowed are worthy of consideration, and will be attended to at a proper time, when the State of the Province again becomes the Subject of discussion.

In the present posture of Our affairs with the American States, His Majesty's Ministers do not judge it adviseable to renew the Office of Lieu^t Governor of Detroit, particularly whilst the Command of the Post continues in the hands of Major Ancram, who is represented to be a discreet and intelligent Officer.

His Majesty's Ministers could have wished that the Expence of the Quarter Master General, Barrack and Marine Departments had not been encreased without their concurrence; they have, however, from a desire to shew countenance to your Proceedings in every possible way, consented that the present Establishment shall continue until final Arrangements shall be made for the execution of the Duties of those Departments, which are now a Subject of Consideration. At the same time I must acquaint you, that they feel themselves under the necessity of refusing a Compliance with your requisition for the Allowance of Aids de Camp, as the admitting an Innovation of that Sort, inconsistently with the regular Line of Military Service would not only be productive of Jealousies and Discontents, but in many respects be extremely prejudicial to His Majesty's Service.

I am &c^a

SYDNEY

LETTER TO BRANT ENCLOSED IN FOREGOING DESPATCH.[2]

Whitehall 6^th April 1786

Colonel Joseph Brant

Sir,

The King has had under His Royal Consideration the two Letters which you delivered to me on the 4^th of Jan^y last,[3] in the presence of Colonel Johnson, and other Officers of the Indian Department; the first of them representing the Claims of the Mohawks for Losses sustained by them and other Tribes of Indians from the Depredations committed on their Lands by the Americans during the late War; and the second expressing the desire of the Indian Confederacy to be informed what Assistance they might expect from this Country in case they should be engaged in Disputes with the Americans relative to their Lands situated within the Territory to which His Majesty has relinquished His Sovereignty.

Were the right of Individuals to Compensation for Losses sustained by the Depredations of an Enemy to be admitted, no Country however opulent it might be, could support itself under such a Burthen, especially when the Contest happens to have taken an unfavorable turn; His Majesty upon this ground conceives that consistently with every principle of Justice, He might withold His Royal Concurrence to the Liquidation of those Demands. But His Majesty in consideration of the zealous and hearty exertions of His Indian Allies, in the support of His Cause, and as a Proof of His most friendly Disposition towards them, has been graciously pleased to consent that the Losses already certified by His Superintendant General shall be made good; that a favorable Attention shall also be shewn to the Claims of others who have pursued the same System of Conduct, and that S^r Guy Carleton, His Governor General of His American Dominions, shall take Measures for carrying His Royal Commands into execution immediately after his Arrival at Quebec.

[1] See Hope to Sydney, p. 538.
[2] See Q 26—1, p. 80.
[3] See Q 26—1, p. 1.

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This liberal Conduct on the part of His Majesty, He trusts will not leave a doubt upon the Minds of His Indian Allies that He shall at all times be ready to attend to their future Welfare, and that He shall be anxious upon every occasion, wherein their Interests and Happiness may be concerned, to give them such further Testimonies of His Royal favor and countenance, as can, consistently with a due regard to the National Faith, and the honor and dignity of His Crown, be afforded to them.

His Majesty recommends to His Indian Allies to continue United in their Councils, and that their Measures may be conducted with temper and moderation from which added to a peaceable demeanor on their part, they must experience many essential Benefits and be most likely to secure to themselves the possession of those Rights and Privileges which their Ancestors have heretofore enjoyed.

I am &c^a

SYDNEY

SYDNEY TO HOPE.[1]

WHITEHALL 6th April 1786

Lieutenant Gov^r Hope

Sir,

After the communication which I made to you in my Letter of this date of His Majesty's gracious approbation of your Proceedings in the Execution of the Duties of your Station, as well as of the favorable Opinion which His Majesty is pleased to entertain of your Ability, It cannot be supposed for a moment that any arrangement which may have occasioned a Change in your Situation can proceed from an idea of a deficiency on your part of those necessary Qualifications which ought to be possessed by a Person holding the distinguished Station in which you have been placed, or from any other Cause that can affect Your Character.

For some time previous to your Appointment to the Office of Lieutenant Governor of Quebec, His Majesty had it in contemplation to appoint a Governor General over his remaining American Dominions, not only with the view of uniting their general Strength and Interests, but for the more ready determination of Subjects upon which instant decision might be requisite. His Majesty upon this Idea has been pleased to fix upon S^r Guy Carleton, an Officer of High Rank and Character in His Military Profession, and peculiarly adapted by long experience for the regulation of Legislative, as well as Commercial and Political Concerns, to fill this very important Office.[2]

To complete the New Arrangement and invest S^r G. Carleton with the Authority which His Station necessarily requires, it has been found expedient to reduce the Powers which have hitherto been exercised by the Governors of Quebec, Nova Scotia and New Brunswick, as well as the designation of their Offices, by stiling them Lieutenant Governors, permitting the two latter nevertheless to enjoy the Emoluments heretofore annexed to their late Situation, and placing the Lieutenant Governor of Quebec upon a Similar footing. It would be very desireable to His Majesty if in this Arrangement you could be accomodated agreeably to your Wishes, but under certain peculiar Circumstances His Majesty has thought it right that the Choice of the Lieu-

[1] Canadian Archives, Q 26—1, p. 82.

[2] The following, from the *London Gazette* of April 15th, 1786, show how this intention was carried out. "The King has been pleased to appoint Sir Guy Carleton, Knight of the Most Hon. Order of the Bath, to be Captain General and Governor in Chief in and over the province of Quebec, in America, in the room of Sir Frederic Haldimand, K.B.

"The King has also been pleased to appoint the said Sir Guy Carleton to be Captain General and Governor in Chief in and over the province of Nova Scotia, including the islands of St. John and Cape Breton, in America, in the room of John Parr, Esq; and of the province of New Brunswick, in America, in the room of Thomas Carleton, Esq.

"The King has also been pleased to appoint the said Sir Guy Carleton to be General and Commander in Chief of his Majesty's forces in the abovementioned provinces and islands, and within the island of Newfoundland."

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tenant Governments of New Brunswick & Quebec should be left to Col° Carleton.[1] If he should prefer his present Situation which from the good opinion and Confidence he has acquired of the Inhabitants of the Province, and the wisdom of his Measures for the increase of its Prosperity, it is hoped he will do, His Majesty most readily concurs in your Continuance at Quebec. But in Case Col. Carleton should be desirous of a change of Situation His Majesty has been graciously pleased to authorise me to offer to you the Lieutenant Government of New Brunswick.[2]

I shall defer all further proceedings upon the Matter, so far as you are concerned, until I receive a Communication from you of your Sentiments upon it. In the mean time I wish you to believe that I am with great Truth and Regard.

I am &c^a^

SYDNEY

MEMORANDA FOR INSTRUCTIONS.[3]

A What Policy should the Governor Gen^l^ observe, with the United States?

A What, with each seperate State?

B What with the Indians?

C What Policy should He observe with Vermont? how far may He permit or connive at an internal trade, or intercourse with the people of that Country, or of the other States, till circumstances are ripe for an arrangement? Instructions, suited to the line of conduct adopted, should be sent to the Officers of the Customs—

D A plan of secret intelligence should be formed, so that nothing hostile to the Kings American Dominions may be resolved on, nor even proposed, but what shall be quickly conveyed, & reported to the Governor Gen^l^—

Some general Ideas on these heads may be given, that the Kings Government in America may not deviate too far, from what shall be judged most advisable at home.

Tis presumed orders will be sent to all the Lieu^t^ Governors to correspond with the Gov^r^ Gen^l^, & to send him every necessary information.

Tis recommended that the Lieu^t^ Governors take the lead, on all occasions where the interests of the people are concerned; that the Kings Government may assume its rights, and stand forth the Protectors of the People, of their Interests, and of their Liberties.

Tis recommended that an intelligent member from each Council, & One from each Assembly be sent to meet the Gov^r^ Gen^l^ in May next, & report to him the State & present condition of their respective Provinces; & to consult how most effectually to carry into execution The Kings benevolent intentions; to arrange & prepare all such measures as they shall judge most likely to promote the security, happiness & prosperity

1 Col. Thomas Carleton was a brother of Sir Guy Carleton, and was at this time Lt. Governor of New Brunswick.

2 This appointment he promptly declined, virtually saying that he would take Quebec or nothing. See Hope to Sydney, June 27th, 1786, Q 26—2, p. 490. He was permitted to remain at Quebec as Lt. Governor and President of the Council, while Col. Carleton was promoted to be Brigadier General and Commander of the Forces, under his brother Lord Dorchester.

3 Canadian Archives, Q 26—1, p. 57. These memoranda were intended at once to solicit instructions from the Home Government and to guide its policy with reference to the mutual relations of the various provinces of British North America. A previous memorandum, of Feb. 20th, 1786, marked "private", though dealing mainly with military matters yet relates to some of the points here dealt with and shows a remarkable change of mind on Carleton's part with reference to the possible future of the remaining colonies. After pointing out the wisdom of cultivating friendly relations with the continent as a whole, he turns to the remaining colonies and says that, in view of their situation; "Good policy therefore requires we should leave as little for them to gain by a separation as possible. All the advantages offered to Congress for a reconciliation should be reconsidered, and such of them as may now be judged adviseable to grant, and are wished for by the Provinces which remain in their allegiance, cannot be granted too soon. That these benefits may have their proper effect, they should be conferred unasked, as soon as may be and as flowing spontaneously from the benevolence of Government, it would be unwise to withhold from dutiful obedience, what might have been obtained by tumults and rebellion, or by delay, to let leaders of Sedition usurp from Government the gratitude and confidence of the people. All Burdens on Land which may serve to excite animosities against the Crown should be taken off, but the regulations which promote the culture of soil, or check the evils of large Grants should remain. A power to protect the people from all vexations, more particularly from those which proceed from men in office, should be lodged on that continent, that a sullen discontent may not have time to spread." See Q 56—3, p. 609. Given also in Q 26—1, p. 53.

of the Kings American Subjects, in order that the result of their Joint deliberations may be submitted to the wisdom of His Majesty's Councils.

DORCHESTER

July 28th 1786
Endorsed: North America
To serve as memorandums —

INSTRUCTIONS TO LORD DORCHESTER, 1786.[1]

GEORGE R.

[L.S.]

[C.O. (Instructions Quebec 1786-1791).]

Instructions to Our Right Trusty and Welbeloved Guy Lord Dorchester, Knight of the Most Honourable Order of the Bath—Our Captain General and Governor in Chief in and over Our Province of Quebec in America, and of all Our Territories dependent thereupon—Given at Our Court at St. James's the 23d Day of August 1786. In the Twenty Sixth year of Our Reign.

First. . . . With these Our Instructions you will receive Our Commission under Our Great Seal of Great Britain constituting you Our Captain General and Governor in Chief in and over Our Province of Quebec in America, and all Our Territories thereunto belonging bounded and described as in Our said Commission is set forth; In execution therefore of the Trust We have reposed in you, you are to take upon you, the Administration of the Government, and to do and execute all Things belonging to your Command according to the several Powers and Authorities of Our said Commission, and these Our Instructions to you, or according to such further Powers & Instructions, as you shall at any time hereafter receive under Our Signet & Sign Manual, or by Our Order in Our Privy Council, and you are to call together at Quebec the following Persons whom We do hereby constitute and appoint to be Our Council for the Affairs of Our said Province and the Territories thereunto belonging Vizt Henry Hope Esqr Lieutenant Govr of Our said Province of Quebec, or the Lieutenant Governor of Our said Province for the time being: William Smith Esqr Our Chief Justice of Our said Province of Quebec or the Chief Justice of Our said Province for the Time being, Hugh Finlay, Thomas Dunn, Francis Les Vesques, Edward Harrison, John Collins, Adam Mabane, Chaussegros de Lery, George Pownall Secretary of Our said Province of Quebec, or the Secretary of Our said Province for the Time being, Picotté de Bellestres, John Fraser, Henry Caldwell, William Grant, Rocque St Ours Junr Francis Baby De Longueuil, Samuel Holland and George Davison Esquires, Sir John Johnson Bart, Charles de Lanaudiere de Boucherville & Compte du Pré Esquires, every one of which respectively shall enjoy his Office of Councillor aforesaid during Our Will and Pleasure and his residence within Our said Province of Quebec and not otherwise.

2d. . . . It is Our further Will and Pleasure that any five of the said Council shall constitute a Board of Council for transacting all Business in which their Advice and Consent may be requisite, Acts of Legislature only expected, (in which Case you are not to act without a Majority of a whole) you are however not to select or appoint any such Members of Our said Council by Name to the Number of five as you may think fit to transact such Business, or term any select Number of such Members by the Name of a Privy Council, but you are on every Occasion where the Attendance of the Members is necessary or required, to summon all such who may be within a convenient Distance; And It is Our further Will and Pleasure that the Members of Our said Council shall have and enjoy all the Powers, Privileges and Emoluments enjoyed by the Mem-

[1] Canadian Archives, M 230, p. 231. Just before leaving for America Sir Guy Carleton was raised to the Peerage as Baron Dorchester. He arrived in Quebec on Oct. 23rd, 1786. On comparing these Instructions with those given to Carleton in 1775 and Haldimand in 1778, it will be observed that the changes are not very numerous, beyond embodying the additional instructions issued in the interval, as in articles 2, 16, 37, and 40 to 43; or readjusting the wording to harmonize with certain ordinances passed in the meantime, as in articles 12 and 14.

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bers of Our Councils in Our other Plantations, and also such others as are contained and directed in Our said Commission under Our Great Seal of Great Britain and in these Our Instructions to you, and that they shall meet together at such time and times, place and places as you in your Discretion shall think necessary, except when they meet for the purpose of Legislation, in which case they are to be assembled at the Town of Quebec only.

3d.... And you are with all due & usual Solemnity to cause Our said Commission to be read and published at the said Meeting of Our Council, which being done, you shall then take and also administer to each of the Members of Our said Council (not being a Canadian professing the Religion of the Church of Rome) the Oaths mentioned in An Act passed in the first year of the Reign of His Majesty King George the First, Intituled "An Act for the further Security of His Majesty's Person & "Government and the Succession of the Crown in the Heirs of the late Princess "Sophia being Protestants and for extinguishing the Hopes of the pretended Prince of "Wales and his open and secret Abettors," as altered and explained by an Act passed in the sixth year of Our Reign Intituled, "An Act for altering the Oath of Abjuration "and Assurance, and for amending so much of an Act of the seventh year of Her late "Majesty Queen Anne, Intituled, An Act for the Improvement of the Union of the "two Kingdoms, as after the time therein limited requires the Delivery of certain Lists "and Copies therein mentioned to Persons indicted of High Treason or Misprision of "Treason," as also make and subscribe the Declaration mentioned in An Act of Parliament made in the twenty fifth year of the Reign of King Charles the Second Intituled, "An Act for preventing Dangers which may happen from Popish Recusants," And you and every one of them are likewise to take an Oath for the due Execution of your and their Places and Trusts with regard to your and their equal and impartial Administration of Justice, and you are also to take the Oath required by an Act passed in the seventh and eighth years of King William the Third to be taken by Governors of Plantations to do their utmost that the Laws relating to the Plantations be observed.

4th.... And whereas by an Act passed in the fourteenth year of Our Reign, Intituled, "An Act for making more effectual Provision for the Government of the Province of "Quebec in North America" It is enacted and provided that no person professing the Religion of the Church of Rome, and residing in the said Province shall be obliged to take the Oath of Supremacy required by an Act passed in the first year of Queen Elizabeth, or any other Oaths substituted by any other Act in the place thereof, but that every such person, who by the said Statute is required to take the Oaths therein mentioned, shall be obliged and is thereby required under certain Penalties to take and subscribe an Oath in the form and Words therein prescribed and set down, It is therefore Our Will and Pleasure that you do administer to each and every Member of Our said Council, being a Canadian & professing the Religion of the Church of Rome, and cause each of them severally to take and subscribe the Oath mentioned in the said Act passed in the fourteenth year of Our Reign, Intituled, "An Act for making more "effectual Provision for the Government of the Province of Quebec in North America," and also cause them severally to take an Oath for the due Execution of their Places and Trusts and for their equal and impartial Administration of Justice.

5.... And that We may be always informed of the Names and Characters of Persons fit to supply the Vacancies which may happen in Our said Council, you are from time to time to transmit to Us by one of Our principal Secretaries of State the Names and Characters of such persons, Inhabitants of Our said Province, whom you shall esteem best qualified for that Trust, and you are also to transmit a Duplicate of the said Account to the Lords of the Committee of Our Privy Council for Trade and Plantations for their Information.

6.... And if it shall at any time happen that by the Death or Departure out of Our said Province of any of Our said Councillors there shall be a Vacancy in Our said Council, Our Will and Pleasure is that you signify the same to Us by one of Our principal Secretaries of State and to the Lords of the Committee of Our Privy Council for Trade and Plantations by the first Opportunity, that We may, by Warrant under

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Our Signet and Sign Manual and with the Advice of Our Privy Council, constitute and appoint others in their stead.

7 You are at your first calling together Our Council to communicate to them such and so many of these Our Instructions wherein their Advice and Consent are mentioned to be requisite, or which contain any Directions as to the framing of Ordinances for the Peace, Welfare and good Government of Our said Province, as likewise all such others from time to time as you shall find convenient for Our service to be imparted to them.

8 You are to permit the Members of Our said Council to have and enjoy freedom of Debate and Vote in All Affairs of publick Concern that may be debated in Council.

9 And whereas by the aforesaid Act passed in the fourteenth year of Our Reign Intituled, "An Act for making more effectual provision for the Government of the "Province of Quebec in North America" It is further enacted and provided that the Council for the Affairs of the said Province to be constituted and appointed in manner therein directed, or the Major part thereof shall have power and Authority to make Ordinances for the peace, Welfare and good Government of the said Province with the Consent of Our Governor or in his Absence the Lieutenant Governor or Commander in Chief for the time being, Provided that no Ordinance shall be passed, unless upon some urgent Occasion at any Meeting of the Council, except between the first Day of January and the first Day of May, You are to take especial Care that the Directions of the said Act be duly observed and that no Ordinance be passed at any Meeting of the Council where less than a Majority is present, or at any time except between the first Day of January and the first Day of May as aforesaid, unless upon some urgent Occasion in which case every Member thereof resident at Quebec or within fifty Miles shall be personally summoned to attend the same.

10 . . . That no Ordinance be passed for laying any Taxes or Duties, such Rates and Taxes only excepted as the Inhabitants of any Town or District may be authorized to Assess, levy and apply within the said Town or District for the making of Roads, erecting & repairing of publick Buildings, or for any other purpose respecting the local Convenience and Œconomy of such Town or District.

That no Ordinance touching Religion or by which any Punishment may be inflicted greater than Fine or Imprisonment for three Months, be made to take Effect, until the same shall have received Our Approbation.

That in all Ordinances imposing Fines, Forfeitures or Penalties, express Mention be made that the same is granted or reserved to Us, Our Heirs and Successors for the publick Uses of the said Province, and the Support of the Government thereof, as by the said Ordinance shall be directed, and that a clause be inserted declaring that the Money arising by the Operation of the said Ordinance shall be accounted for unto Us in this Kingdom, and to Our Commissioners of Our Treasury for the time being, and audited by Our Auditor General of Our Plantations or his Deputy.

That no Ordinance be passed relative to the Trade Commerce, or Fisheries of the said Province, by which the Inhabitants thereof shall be put upon a more advantageous footing than any other of Our Subjects, either of this Kingdom or of the Plantations, who have retained their Allegiance.

That no Ordinance respecting private property be passed without a Clause suspending its Execution until Our Royal Will and Pleasure is known, nor without a Saving of the right of Us, Our Heirs & Successors and of all Bodies Politick and Corporate, and of all other persons, except such as are mentioned in the said Ordinance and those claiming by, from, and under them, And before such Ordinance is passed Proof must be made before you in Council and entered in the Council Books, that publick Notification was made of the Parties' Intention to apply for such Ordinance in the several Parish Churches, where the Lands in question lye for three Sundays at least successively before any such Ordinances shall be proposed, And you are to transmit and annex to the said Ordinance a Certificate under your Hand that the same passed through all the forms abovementioned.

That, except in Cases of imminent Necessity or immediate temporary Expediency, you shall not enact any Ordinance for less time than two years, and you shall not

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re-enact any Ordinance, to which Our Assent shall have been once refused, nor give your Assent to any Ordinance for repealing any other passed in your Government, which shall have received Our royal Approbation, unless you take care that there be a Clause inserted therein suspending the Execution thereof until Our Pleasure shall be known, and in either case it will be your Duty to make full representation to Us by One of Our principal Secretaries of State, and to the Lords of the Committee of our Privy Council for Trade & Plantations for their Information of the reasons and Necessity which appeared to you for passing such Ordinance.

That all such Ordinances be transmitted by you within six Months after their passing, or sooner if Opportunity offers, to Us by one of Our principal Secretaries of State and Duplicates thereof to the Lords of the Committee of Our Privy Council for Trade & Plantations for their Information; That they be abstracted in the Margins and accompanied with very full and particular Observations where they may be necessary, together with fair Copies of the Journals of the proceedings of the Council, which you are to require from the Clerk of the said Council.

11 . . . In the Consideration of what may be necessary to be provided for by Law within Our said Province, as created and established by the aforesaid Act, Intituled, "An Act for making more effectual Provision for the Government of the Province "of Quebec in North America," a great Variety of important Objects hold themselves forth in the Attention of the Legislative Council.

12 . . . The Establishment of Courts and a proper Mode of administering Civil and Criminal Justice throughout the whole Extent of Our Province according to the Principles declared in the said Act for making more effectual provision for the Government thereof demand the greatest Care and Circumspection, for as on the one Hand it is Our gracious purpose, conformable to the Spirit and Intention of the said Act of Parliament, that Our Canadian Subjects should have the Benefit and Use of their own Laws, Usages and Customs in all Controversies respecting Titles of Land, and the Tenure, Descent, Alienation, Incumbrances and Settlements of real Estates and the Distribution of personal property of Persons dying intestate, so on the other hand it will be the Duty of the Legislative Council to consider well in framing such Ordinances, as may be necessary for the Establishment of Courts of Justice, and for the better Administration of Justice, whether the Laws of England may not be, if not altogether, at least in part the Rule for the Decision in all Cases of personal Actions grounded upon Debts, Promises, Contracts and Agreements, whether of a Mercantile or other Nature, and also of Wrongs proper to be compensated in Damages, and more especially where Our Natural born Subjects of Great Britain, Ireland, or other Plantations residing at Quebec, or who may resort thither or have Credit or Property within the same, may happen to be either Plaintiff or Defendant in any Civil Suit of such a Nature.

13 . . . Whereas an Ordinance hath been passed in Our Province of Quebec, Intituled, "An Ordinance for securing the Liberty of the Subject and for the preven-"tion of Imprisonments out of this Province," It is Our Will and Pleasure that you do take effectual Care that the said Ordinance be duly enforced, so that every Security to personal Liberty, which is thereby provided for, may be fully enjoyed by Our Subjects in that Province.

14 . . . Whereas, in pursuance of Our former Instructions to Our Governors and Commanders in Chief, Courts of Justice have been established within Our province of Quebec, It is Our Will and Pleasure that you do take due care that in all Cases whatever the Powers and Authorities granted by Us, or by any Ordinance confirmed by Us, to the said several Courts be duly observed and enforced, and that the Proceedings therein be in all things conformable to the said Act of Parliament "for "making more effectual provision for the Government of the Province of Quebec," and to such Ordinances as may have been or hereafter may be enacted by the Legislature for those purposes; And that the Governor and Council (of which in the Absence of the Governor and Lieutenant Governor the Chief Justice is to be President) shall continue to be a Court of Civil Jurisdiction for the hearing and determining of all Appeals from the Judgment of the other Courts, where the Matter

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in dispute is above the Value of ten Pounds; That any five of the said Council (if no more shall upon Summons be present) with the Governor, Lieutenant Governor or Chief Justice shall constitute a Court for that purpose, and that their Judgment shall be final in all Cases not exceeding the Value of five hundred Pounds Sterling; In which Cases an Appeal from their Judgment is to be admitted to Us in Our Privy Council; It is however Our Will and Pleasure that no Appeal be allowed unless Security be first duly given by the Appellant that he will effectually prosecute the same, and answer the Condemnation, as also pay such Costs and Damages as shall be awarded by Us, in case the Sentence be affirmed; Provided nevertheless, where the Matter in Question relates to the taking or demanding of any Duty payable to Us, or to any Fee of Office, or Annual Rents or other such like Matter or Thing, where the Right in future may be bound, in all such Cases Appeal to Us in Our Privy Council is to be admitted, though the immediate Sum or Value appealed for be of less Value; And it is Our further Will and Pleasure that in all Cases where Appeals are admitted unto Us in Our Privy Council Execution be suspended until the final Determination of such Appeal, Unless good and sufficient Security be given by the Appellee to make ample restitution of all that the Appellant shall have lost by means of such Decree or Judgment, in case upon the Determination of such Appeal such Decree or Judgment should be reserved, and restitution awarded to the Appellant: Appeals unto Us in Our Privy Council are also to be admitted in all Cases of Fines imposed for Mis-demeanours, Provided the Fines so imposed amount to or exceed the Sum of One hundred Pounds Sterling, the Appellant first giving good Security that he will effectually prosecute the same, & answer the Condemnation, if the Sentence by which such Fine was imposed in Quebec be affirmed.

15 And it is Our Will and Pleasure that you do, from time to time as the Circumstances and Condition of Affairs may require, with Our said Council in their Legislative Capacity deliberate upon and frame such Ordinances as may be expedient for continuing, amending or enforcing any Ordinances now in force, or making any further or necessary Changes and regulations in the Courts of Judicature already established, or in the Mode of administering Justice within Our said Province, provided that such Ordinances be strictly conformable to the Act of Parliament aforesaid and these Our Instructions.

16 It is Our Will and Pleasure that all Commissions, to be granted by you to any person or persons to be Judges or Justices of the Peace or other necessary Officers, be granted during Pleasure only.

17 You shall not displace any of the Judges, Justices of the peace or other Officers or Ministers without good and sufficient Cause, which you shall signify in the fullest and most distinct Manner to Us by one of Our Principal Secretaries of State and to the Lords of the Committee of Our Privy Council for Trade & Plantations for their Information.

18 Whereas it is of the greatest Importance to Our Service and to the Welfare of Our Plantations that Justice be every where speedily and duly Administered, and that all Disorders, Delays and other undue Practices in the Administration thereof be effectually prevented, We do particularly require you to take especial Care that in all Courts where you are or shall be authorized to preside Justice be impartially administered, And that in all other Courts established or to be established within Our said Province all Judges and other Persons therein concerned do likewise perform their several Duties without Delay or Partiality.

19 You are to take care that all Writs be issued in Our Name throughout the Province under your Government.

20 Whereas the Establishment of proper Regulations in Matters of Ecclesiastical Concern is an Object of very great Importance, it will be your indispensible Duty to take care that no Arrangements in regard thereto be made, but such as may give full Satisfaction to Our New Subjects in every Point, in which they have a right to any Indulgence on that Head, always remembering that it is a Toleration of the free Exercise of the Religion of the Church of Rome only, to which they are entitled but

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not to the powers and Privileges of it as an established Church, that being a Preference which belongs only to the Protestant Church of England.

21 Upon these Principles therefore and to the end that Our just Supremacy in all Matters Ecclesiastical as well as Civil may have its due Scope and Influence It is Our Will and Pleasure

First That all Appeals to, or Correspondence with any foreign Ecclesiastical Jurisdiction, of what Nature or kind soever, be absolutely forbidden under very severe Penalties.

Secondly That no Episcopal or Vicarial powers be exercised within Our said Province by any person professing the Religion of the Church of Rome, but such only as are essentially and indispensibly necessary to the free Exercise of the Romish Religion, and in those Cases not without a Licence and permission from you under the Seal of Our said Province, for and during Our Will and Pleasure, and under such other Limitations and restrictions as may correspond with the Spirit and Provision of the Act of Parliament "for making more effectual Provision for the Government of "the Province of Quebec," and no Person whatever is to have Holy Orders conferred upon him or to have the Cure of Souls without a Licence for that purpose first had and obtained from you.

Thirdly . . . That no person professing the Religion of the Church of Rome be allowed to fill any Ecclesiastical Benefice or to have or enjoy any of the rights or Profits belonging thereto, who is not a Canadian by Birth, (such only excepted as are now in possession of any such Benefice) and who is not appointed thereto by Us or by or under Our Authority, and that all Right or Claim of Right in any other person whatever to nominate, present or appoint to any Vacant Benefice, other than such as may lay Claim to the Patronage of Benefices as a Civil Right, be absolutely abolished, no person to hold more than one Benefice, or at least not more than can reasonably be served by one and the same Incumbent.

Fourthly That no Person whatever professing the Religion of the Church of Rome be appointed Incumbent of any Parish in which the Majority of the Inhabitants shall solicit the Appointment of a Protestant Minister; in such case the Incumbent shall be a Protestant and entitled to all Tythes payable within such Parish; But nevertheless the Roman Catholicks may have the Use of the Church for the free Exercise of their Religion at such times as may not interfere with the Religious Worship of the Protestants; and in like manner the Protestant Inhabitants in every Parish where the Majority of Parishioners are Roman Catholicks shall notwithstanding have the Use of the Church for the Exercise of their Religion at such times as may not interfere with the religious Worship of the Roman Catholicks.

Fifthly That no Incumbent professing the Religion of the Church of Rome appointed to any Parish shall be entitled to receive any Tythes for Lands or Possesions occupied by a Protestant, but such Tythes shall be received by such Persons as you shall appoint, and shall be reserved in the Hands of Our Receiver General as aforesaid for the Support of a Protestant Clergy in Our said Province to be actually resident within the same and not otherwise, according to such Directions as you shall receive from Us in that behalf, and in like manner all growing Rents and Profits of a Vacant Benefice shall during such Vacancy be reserved for and applied to the like Uses.

Sixthly That all Persons professing the Religion of the Church of Rome, who are already possessed of, or may hereafter be appointed to any Ecclesiastical Benefice, or who may be licensed to exercise any Power or Authority in respect thereto, do take and subscribe before you in Council, or before such Person as you shall appoint to administer the same, the Oath required to be taken and subscribed by the aforesaid Act of Parliament, passed in the fourteenth year of Our Reign, Intituled "An Act "for making more effectual Provision for the Government of the Province of Quebec "in North America."

Seventhly That all Incumbents of Parishes shall hold their respective Benefices during good Behaviour, subject however, in case of any Conviction for criminal Offences, or upon due proof of seditious Attempts to disturb the Peace and Tranquillity of Our Government, to be deprived or suspended by you with the Advice and Consent of a Majority of Our said Council.

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Eighthly. . . That such Ecclesiasticks as may think fit to enter into the Holy State of Matrimony shall be released from all Penalties to which they may have been subjected in such Cases by any Authority of the See of Rome.

Ninthly. . . That freedom of the Burial of the Dead in the Churches and Church-yards be allowed indiscriminately to every Christian Persuasion.

Tenthly. . That the Royal Family be prayed for in all Churches and Places of Holy Worship in such Manner and Form, as is used in this Kingdom, and that Our Arms and Insignia be put up, not only in all such Churches and Places of Holy Worship, but also in all Courts of Justice, and that the Arms of France be taken down in every such Church or Court where they may at present remain.

Eleventhly. . . . That the Society of Romish Priests, called the Seminaries of Quebec and Montreal, shall continue to possess & occupy their Houses of Residence and all other Houses and Lands to which they were lawfully entitled on the 13th of September 1759; and it shall be lawful for those Societies to fill up Vacancies and admit new Members according to the Rules of their Foundations, and to educate Youth in order to qualify them for the Service of Parochial Cures as they shall become vacant. It is nevertheless Our Will and Pleasure that not only those Seminaries, but all other Religious Communities so long as the same shall continue, be subject to Visitation by You Our Governor, or such other Person or Persons as you shall appoint for that purpose, and also subject to such Rules & Regulations as you shall, with the Advice and Consent of Our Council, think fit to establish and appoint.

Twelfthly.—It is also Our Will and Pleasure that all other religious Seminaries and Communities (that of the Jesuits only excepted) do for the present and until We can be more fully informed of the true State of them, and how far they are, or are not essential to the free Exercise of the Religion of the Church of Rome, as allowed within Our said Province, remain upon their present Establishment, but you are not to allow the Admission of any New Members into any of the said Societies or Communities (the Religious Communities of Women only excepted) without Our express Orders for that purpose, That the Society of Jesuits be suppressed and dissolved and no longer continued as a Body Corporate or Politick, and all their Rights, Possessions and Property shall be vested in Us for such purposes as We may hereafter think fit to direct and appoint; But We think fit to declare Our Royal Intention to be, that the present Members of the said Society as established at Quebec shall be allowed sufficient Stipends & Provisions during their natural Lives, that all Missionaries amongst the Indians whether established under the Authority of or appointed by the Jesuits, or by any other Ecclesiastical Authority of the Romish Church be withdrawn by Degrees, and at such times and in such manner as shall be satisfactory to the said Indians and consistent with publick Safety, and Protestant Missionaries appointed in their Places—That all Ecclesiastical Persons whatsoever of the Church of Rome be inhibited, upon pain of Deprivation, from influencing any person in the making of a Will, from inveigling Protestants to become Papists or from tampering with them in Matters of Religion, and that the Romish Priests be forbidden to inveigh in their Sermons against the Religion of the Church of England, or to marry, baptize or visit the Sick or bury any of Our Protestant Subjects, if a Protestant Minister be upon the Spot.

22. . . . You are at all times and upon all Occasions to give every Countenance and Protection in your Power to such Protestant Ministers and Schoolmasters as are already established within Our said Province, or may hereafter be sent thither, to take care that such Stipends and Allowances, as We may think fit to appoint for them, be duly paid, That the Churches already appropriated, or which may hereafter be appropriated to the Use of divine Worship according to the Rites of the Church of England as by Law established, be well & orderly kept, and, as the Number of Protestants shall by God's Blessing increase, to lay out new Parishes in convenient Situations, & set apart and appropriate proper Districts of Land therein for the Scite of Churches & Parsonage Houses and for Glebes for the Ministers and Schoolmasters.

23. . . . You are to take especial Care that Almighty God be devoutly & duly served in all Protestant Churches throughout Our said Province in which Divine Service is per-

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formed according to the Rites of the Church of England, That the Book of Common Prayer, as by Law established, be read each Sunday & Holiday, and the Blessed Sacrament duly administered.

24. . . . You are not to prefer any Protestant Minister to any Ecclesiastical Benefice in the Province under your Government without a Certificate from the Right Reverend Father in God the Lord Bishop of London of his being conformable to the Doctrine and Discipline of the Church of England, and of a good Life and Conversation, and if any Person hereafter preferred to a Benefice shall appear to you to give Scandal either by his Doctrine or Manners you are to use the best Means for his removal.

25. . . . You are to give Orders forthwith that every Protestant Minister within your Government be one of the Vestry in his respective Parish, and that no Vestry be held without him, except in case of Sickness or, after Notice of a Vestry being summoned, he omit to come.

26. . . . And to the end that the Ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government as far as conveniently may be, We do think fit that you give all Countenance and Encouragement to the Exercise of the same, excepting only the collating to Benefices, granting Licences for Marriages and Probates of Wills, which We have reserved to you Our Governor and to the Commander in Chief of Our said Province for the time being.

27. . . . And We do further direct that no Schoolmaster, who shall arrive in Our said Province from this Kingdom, be henceforward permitted to keep School without the Licence of the said Lord Bishop of London, and that no other Person now there or that shall come from other Parts shall be admitted to keep School in your Government without your Licence first obtained.

28. . . . And you are to take especial Care that a Table of Marriages established by the Canons of the Church of England be hung up in all Places of Publick Worship according to the Rites of the Church of England.

29. . . . And it is Our further Will and Pleasure that, in order to suppress as much as in you lies every Species of Vice & Immorality, you forthwith do cause all Laws already made against Blasphemy, Profaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's Day, Swearing & Drunkenness to be vigorously put in Execution in every Part of your Government, and that you take due Care for the Punishment of these and every other Vice and Immorality by Presentment upon Oath to be made to the temporal Courts by the Church Wardens of the several Parishes at proper Times of the year to be appointed for that purpose, And for the further Discouragement of Vice and Encouragement of Virtue and good Living (that by such Examples the Infidels may be invited and persuaded to embrace the Christian Religion) you are not to admit any Persons to Publick Trusts and Employments in the Province under your Government whose ill Fame and Conversation may occasion Scandal.

30. . . . The Extension of the Limits of the Province of Quebec necessarily calls forth your Attention to a Variety of new Matter and new Objects of Consideration: The Protection and Controul of the Various Settlements of Canadian Subjects and the Regulation of the Peltry-Trade in the Upper or interior Country on the one hand, And the Protection of the Fisheries in the Gulf of St. Lawrence and on the Labrador Coast on the other hand point to Regulations that require Deliberation and Dispatch.

31. . . . You are not to allow any Settlements to be made beyond the Boundaries ascertained to the different Posts among the Indian Nations within the Limits of Our Province of Quebec in Alliance with Us, as such Settlements may tend to disgust those Savages, excite their Enmity and perhaps finally destroy the Peltry-Trade which ought to be cherished & encouraged by every Means in your Power.

32. . . . It is Our Royal Intention that the Peltry-Trade of the interior Country should be free and open to all Our Subjects, Inhabitants of any of Our Colonies, who shall, pursuant to what was directed by Our Royal Proclamation of 1763, obtain trading Licences from the Governors of any of Our said Colonies under penalties to observe such Regulations, as shall be made by Our Legislature of Quebec for that purpose. These regulations therefore when established must be made publick throughout all Our American Possessions and they must have for their Object the giving every possible

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Facility to that Trade, which the Nature of it will admit, and which may be consistent with fair and just Dealing towards the Savages, with whom it is carried on; The fixing stated Times and Places for carrying on the Trade and adjusting Modes of settling Tarifs of the Prices of Goods and Furs, and above all the restraining the sale of spirituous Liquors to the Indians will be the most probable and effectual Means of answering the Ends proposed; These and a Variety of other Regulations incident to the Nature and purpose of the Peltry-Trade in the interior Country are fully stated in a Plan proposed by Our Commissioners for Trade and Plantations in 1764, a Copy of which will be herewith delivered to you, and which will serve as a Guide in a Variety of Cases, where it may be necessary to make Provision by Law for that important Branch of the American Commerce.

33. The Fisheries on the Coast of Labrador and the Islands adjacent thereto are Objects of the greatest Importance, not only on Account of the Commodities they produce, but also as Nurseries of Seamen, upon whom the Strength & Security of Our Kingdom depend.

34... Justice & Equity demand that the real and actual Property & Possession of the Canadian Subjects on that Coast should be preserved entire, and that they should not be molested or hindered in the Exercise of any sedentary Fisheries they may have established there.

35....Their Claims however extend to but a small District of the Coast, on the greatest part of which District a Cod-Fishery is stated to be impracticable.

36....On all such Parts of the Coast where there are no Canadian Possessions, and more especially where a Valuable Cod-Fishery may be carried on, it will be your Duty to make the Interest of Our British Subjects going out to fish there in Ships fitted out from Great Britain the first Object of your Care, and as far as Circumstances will admit to establish on that Coast the Regulations in favour of British fishing Ships, which have been so wisely adopted by the Act of Parliament passed in the Reign of King William the Third for the Encouragement of the Newfoundland Fishery and you are on no account to allow any Possession to be taken, or Sedentary Fisheries to be established upon any parts of the Coast that are not already private Property by any Persons whatever, except only such as shall produce annually a Certificate of their having fitted out from some Port in Great Britain.

37....Whereas it will be for the general Benefit of Our Subjects carrying on the Fishery in the Bay of Chaleur in Our Province of Quebec that such Part of the Beach & Shore of the said Bay as is ungranted should be reserved to Us, Our Heirs & Successors, It is therefore Our Will and Pleasure that you do not in future direct any Survey to be made or Grant to be passed for any Part of the ungranted Beach or Shore of the said Bay of Chaleur, except such Parts thereof as by Our Orders in Council dated the 29th of June and 21st of July last are directed to be granted to John Shoolbred of London, Merchant, and to Messrs. Robin Pipon and Co of the Island of Jersey, Merchants, but that the same be reserved to Us, Our Heirs and Successors together with a sufficient Quantity of Wood-Land adjoining thereto necessary for the purpose of carrying on the Fishery; The Limits of such Wood-Land so to be reserved, to be determined upon and ascertained by you and Our Council for Our said Province of Quebec in such manner as from the most authentick Information shall appear to you & them most convenient and proper for that purpose; It is nevertheless Our Intention and We do hereby signify to you Our Will and Pleasure that the free Use of such Beach or Shore and of the Wood-Land so to be reserved shall be allowed by you or any Person authorized by you to such of Our Subjects as shall resort thither for the Purpose of carrying on the Fishery in such proportions as the Number of Shallops, he or they shall respectively employ, may require; provided that, if any Fisherman who shall have permission to occupy any Part of the said Beach or Shore and Wood-Land for the purpose of the said Fishery shall not during any one Season continue so to occupy & employ any Part of the said Beach or Shore and Wood Land so allotted to him, you or any Person authorized by you as above may & shall allow the Use of such Part to any other Fisherman who shall apply for the same for the purpose of carrying on the Fishery. And Whereas it may be necessary

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to establish local Regulations to prevent Abuses as well as Disputes and Misunderstanding between the Fishermen resorting to the said Beach or Shore; It is Our Will and Pleasure that you, by and with the Advice and Consent of Our said Council, do frame such Regulations from time to time as to you shall appear necessary to answer those salutary Purposes and that you transmit the same to Us thro' One of Our Principal Secretaries of State for Our Pleasure therein by the first Opportunity.

38. . . . We have mentioned to you the Fisheries upon the Coast of Labrador as the Main Object of your Attention, but the Commerce carried on with the Savages of that Coast and the State and Condition of those Savages deserve some regard: The Society of Unitas Fratrum urged by a laudable Zeal for promoting Christianity have already under Our protection and with Our permission formed Establishments in the northern Parts of that Coast for the purpose of civilizing the Nations and converting them to the Christian Religion. Their Success has been answerable to their Zeal, and It is Our express Will and Pleasure that you do give them every Countenance & Encouragement in your Power, and that you do not allow any Establishment to be made but with their Consent within the Limits of their Possessions.

39. . . . By Our Commission to you under Our Great Seal of Great Britain you are authorized & impowered with the Advice and Consent of Our Council to settle & agree with the Inhabitants of Our said Province of Quebec for such Lands, Tenements and Hereditaments as now are or shall hereafter be in Our Power to dispose of, It is therefore Our Will and Pleasure that all Lands, which now are or hereafter may be subject to Our Disposal, be granted in Fief or Seigneurie, in like manner as was practised antecedent to the Conquest of the said Province, omitting however in any Grant that shall be passed of such Lands the reservation of any judicial Powers or Privileges whatever; And It is Our further Will and Pleasure that all Grants in Fief or Seigneurie, so to be passed by you as aforesaid, be made subject to Our Royal ratification or Disallowance and a due Registry thereof within a limited time, in like manner as was practised in regard to Grants and Concessions held in Fief or Seigneurie under the French Government.

40. . . . Whereas many of Our Loyal Subjects, Inhabitants of the Colonies and Provinces now the United States of America, are desirous of retaining their Allegiance to Us and of living in Our Dominions, and for this purpose are disposed to take up and improve Lands in Our Province of Quebec, And We being desirous to encourage Our said Loyal Subjects in such their Intentions and to testify Our Approbation of their Loyalty to Us and Obedience to Our Government by allotting Lands for them in Our said Province, And Whereas We are also desirous of testifying Our Approbation of the Bravery and Loyalty of our Forces serving in Our said Province, and who may have been reduced there, by allowing a certain Quantity of Land to such of the Non-Commissioned Officers and Private Men of our said Forces who are inclined to become Settlers therein, It is Our Will and Pleasure that immediately after you shall receive these Our Instructions you do direct Our Surveyor General of Lands for Our said Province of Quebec to admeasure and lay out such a Quantity of Land as you, with the Advice of Our Council, shall deem necessary, and convenient for the settlement of Our said Loyal Subjects, and the Non-Commissioned Officers and Private Men of Our Forces which may have been reduced in Our said province, who shall be desirous of becoming Settlers therein; Such Lands to be divided into distinct Seigneuries or Fiefs to extend from two to four Leagues in front and from three to five Leagues in Depth if situated upon a navigable River, otherwise to be run square or in such shape and in such Quantities as shall be convenient and practicable, and in each Seigneurie a Glebe to be reserved & laid out in the most convenient Spot, to contain not less than 300, nor more than 500 Acres; The Property of which Seigneuries or Fiefs shall be and remain vested in Us, Our Heirs & Successors, And you shall allot such Parts of the same as shall be applied for by any of Our said Loyal Subjects, Non-Commissioned Officers and Private Men of Our Forces reduced as aforesaid, in the following Proportions, that is to say,

To every Master of a Family One Hundred Acres and fifty Acres for each Person of which his Family shall consist;

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To every single Man fifty Acres;

To every Non-Commissioned Officer of Our Forces reduced in Quebec Two Hundred Acres;

To every private Man reduced as aforesaid One Hundred Acres,

And for every Person in their Families fifty Acres.

The said Lands to be held under Us, Our Heirs and Successors, Seigneurs of the Seigneurie or Fief in which the same shall be situated, upon the same Terms, Acknowledgements & Services as Lands are held in Our said Province under the respective Seigneurs holding and possessing Seigneuries or Fiefs therein, and reserving to Us, Our Heirs and Successors from and after the expiration of Ten Years from the admission of the respective Tenants a Quit Rent of one half penny per Acre.

41 . . . And whereas upon the raising and establishing the Corps late the 84[th] Regiment of Foot, We did promise and declare that the Officers and Privates of the said Corps should when reduced be intitled to and receive Grants for certain allotments of Lands in proportion to their respective Ranks therein, It is Our Will and Pleasure that you do in manner as herein before directed Grant Warrants of Allotment and Survey to such of the Officers and privates of the said late Eighty fourth Regiment of Foot now reduced, who shall be willing to settle and become Inhabitants of Our said Province of Quebec, and shall apply for the same for such Quantities of Land as they shall be respectively intitled to, In consequence of our said promise and declaration contained in Our Instructions to Our Governors of New York and North Carolina dated the 3[d] April 1775 that is to say,

To Field Officers	5000 Acres
Captains	3000
Subalterns	2000
Non Commission Officer	200
Privates	50

and that the Surveys be made and Grants for the same delivered free of Expence as herein before directed, Provided nevertheless that every Commissioned and Non Commissioned Officer or private belonging to the said late 84[th] Regiment of Foot, who shall claim and apply for Land in Our Province of Quebec as aforesaid, shall declare upon Oath, that no Land has been obtained by him in any of our other Provinces in America under Our Royal declaration as aforesaid.

42 . . . It is Our further Will and Pleasure, that every Person within the meaning of these Our Instructions upon making application for Land shall take the Oaths directed by Law before you or our Commander in Chief for the time being, or some person by you or him authorized for that purpose and shall also at the same time make and subscribe the following Declaration (Viz[t].) "I, A B, do promise and declare that "I will maintain and defend to the utmost of my power the authority of the King in "His Parliament, as the supreme Legislature of this Province," which Oaths and declaration shall also be taken, made, and subscribed by every Future Tenant before his, her, or their admission upon Alienation, Descent, Marriage or otherwise howsoever, and upon refusal the Lands to become re-vested in us Our Heirs and Successors And it is Our further Will and Pleasure that the expence of laying out and surveying as well the Seigneuries or Fiefs aforesaid, as the several Allotments within the same and of the Deed of admission shall be paid by the Receiver General of Our Revenue in the said Province of Quebec ; out of such Monies as shall be in his hands, upon a Certificate from you or Our Commander in Chief for the time being in Council, Oath being made by Our Surveyor General to the Account of such Expence ; Provided however that only one half of the usual and accustomed Fees of Office shall be allowed to Our said Surveyor General or any other of Our Officers in the said Province entitled thereunto upon any Survey or Allotment made, or upon admission into any Lands by Virtue of these Our Instructions.

43 . . . And whereas we have some time since purchased the Seigneurie of Sorel from the then Proprietors, the Lands of which are particularly well adapted for improvement and cultivation ; and the local situation of the said Seigneurie makes it expedient that the same should be settled by as considerable a number of Inhabitants of approved

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Loyalty as can be accommodated therein, with all possible dispatch—It is therefore Our will and Pleasure, that you do cause all such Lands within the same as are undisposed of, to be run into small Allotments, and that you do allot the same to such of the Non-Commissioned Officers and private Men of Our Forces who may have been reduced in Our said Province, or to such other of Our Loyal Subjects as may be inclined to settle and improve the same, in such Proportions as you may judge most conducive to their Interest and the more speedy Settlement of Our said Seigneurie. The Lands so allotted to be held of Us, Our Heirs, and Successors, Seigneurs of Sorel upon the same Conditions and under the same reserved Rent at the Expiration of ten years, as the other Tenants of Seigneuries now hold their Lands and pay to Us, and also of taking the Oaths and making and subscribing the Declaration as herein before is mentioned and directed; The Expence of making the said Allotments and of Admission thereunto be also paid and defrayed in like manner as those in the Seigneuries directed to be laid out by these Our Instructions. It is nevertheless Our Will and Pleasure that the Allotments to be made to such of Our Loyal Subjects from the Provinces or Colonies now the United States of America, as may be disposed to settle and improve Lands in Our said Province of Quebec, shall be limited to those only who may have withdrawn themselves from the said Provinces or Colonies after the signing of the definitive Treaty of Peace with the said United States, & no other.

And it is Our Will and Pleasure that a Record be kept in the Office of the Receiver General of Our Revenue of every Admission into Lands as well by Virtue of these Our Instructions with respect to Our Loving Subjects retiring from the Provinces & Colonies, now the United States of America, and to Our Forces disbanded as aforesaid, as in Cases of future Admission by Alienation or otherwise, A Docquet of which shall be transmitted yearly to Us, thro' one of Our principal Secretaries of State, & also a Duplicate thereof to Our High Treasurer or the Commissioners of Our Treasury for the time being.

44. . . . It is Our Will and Pleasure however that no Grants or Allotments be made of any Lands, on which there is any considerable Growth of White Pines fit for Masting Our Royal Navy, and which lie convenient for Water Carriage, but that you do cause all such Lands to be set apart for Our Use and proper Regulations to be made and Penalties inflicted to prevent Trespasses on such Tracts and the cutting down or destroying of the Trees growing thereon.

45. . . . And whereas it appears, from the Representations of Our late Governor of the District of Trois Rivières, that the Iron Works at S^t. Maurice in that District are of great Consequence to Our Service, It is therefore Our Will and Pleasure that no part of the Lands upon which the said Iron Works were carried on, or from which the Ore used in such Works was procured, or which shall appear to be necessary & convenient for that Establishment either in respect to a free Passage to the River S^t. Lawrence or for producing a necessary Supply of Wood, Corn and Hay, or for Pasture for Cattle, be granted to any private person whatever; And also that as large a District of Land as conveniently may be, adjacent to & lying round the said Iron Works, over & above what may be necessary for the above purposes, be reserved for Our Use to be disposed of in such manner as We shall hereafter direct and appoint.

46. . . . And it is Our further Will and Pleasure that you do consider of a proper and effectual Method of collecting, receiving and accounting for Our Quit Rents, whereby all Frauds, Concealments, Irregularity or Neglect therein may be prevented, and whereby the Receipt may be effectually checked and controlled—And if it shall appear necessary to pass an Ordinance for the more effectually ascertaining, and the more speedily and regularly Collecting Our Quit Rents, you are to prepare the Heads of such a Bill as you shall think may most effectually conduce to the procuring of the good Ends proposed, and to transmit the same to Us by One of Our Principal Secretaries of State for Our further Directions therein, and you are also to transmit a Duplicate thereof to the Lords of the Committee of Our Privy Council for Trade and Plantations for their Information.

47. . . . You are to use your best Endeavours in improving the Trade of the Province under your Government by settling such Orders & Regulations therein, with the Advice

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of Our said Council, as may be most acceptable to the Generality of the Inhabitants; And it is Our express Will and Pleasure that you do not on any pretence whatever, upon pain of Our highest Displeasure, give your Assent to any Law or Laws for setting up any Manufactures and carrying on any Trades which are hurtful & prejudicial to this Kingdom, and that you do use your utmost Endeavours to discourage discountenance & restrain any Attempts which may be made to set up such Manufactures or establish any such Trades.

48.... And it is Our Will and Pleasure that you do not dispose of any Forfeitures or Escheats to any Person until the Sheriff or other proper Officer has made Enquiry by a Jury upon their Oaths into the true Value thereof, nor until you have transmitted to Our Commissioners of Our Treasury a particular Account of such Forfeitures & Escheats and the Value thereof; And you are to take care that the produce of such forfeitures and Escheats, in case We shall think proper to give you Directions to dispose of the same, be duly paid to Our Treasurer or Receiver General of Our said Province, and a full Account transmitted to Our Commissioners of Our Treasury or Our High Treasurer for the time being, with the Names of the persons to whom disposed of.

49.... And Whereas Commissions have been granted unto several Persons in Our respective Plantations in America for the trying of Pirates in those parts pursuant to the Acts for the more effectual Suppression of Piracy and by a Commission already sent to Our Governor there is impowered, together with others therein mentioned, to proceed accordingly in reference to Our Will and Pleasure is that you do use your best Endeavours to apprehend all Persons whatever, who may have been guilty of Piracy within your Government, or who having committed such Crimes at other Places may come within your Jurisdiction, and until We shall think proper to direct the like Commission to be established for Our Government of Quebec, you are to send such Pirates with what Proofs of their Guilt you can procure or collect to Our Governor of to be tried and punished under the Authority of the Commission established for those Parts.

50.... And whereas you will receive from Our Commissioners for executing the Office of High Admiral of Great Britain & of Our Plantations a Commission constituting you Vice Admiral of Our said Province, you are hereby required and directed carefully to put in execution the several Powers thereby granted you.

51.... Whereas great Inconveniences have happened heretofore by Merchant-Ships and other Vessels in the Plantations wearing the Colours borne by Our Ships of War under pretence of Commissions granted to them by the Governors of the said Plantations, And by trading under those Colours, not only among Our own Subjects, but also those of other Princes and States, and committing divers Irregularities, they may very much dishonour Our Service; For the preventing thereof you are to oblige the Commanders of all such Ships, to which you shall grant Commissions, to wear no other Colours than such as are described in an Order in Council of the 7th Jany 1730 in relation to Colours to be worn by all Ships & Vessels, except Our Ships of War.

52.... And whereas there have been great Irregularities in the Manner of granting Commissions in the Plantations to private Ships of War, you are to govern yourself, whenever there shall be Occasion, according to the Commissions & Instructions granted in this Kingdom, but you are not to grant Commissions of Marque or Reprisal against any Prince or State or their Subjects in Amity with Us to any Person whatever without Our special Command.

53. Whereas We have been informed that during the time of War Our Enemies have frequently got Intelligence of the State of Our Plantations by Letters from private Persons to their Correspondents in Great Britain taken on board Ships coming from the Plantations, which has been of dangerous Consequence, Our Will and Pleasure therefore is that you signify to all Merchants, Planters and others, that they be very cautious in time of War, whenever that shall happen, in giving any Accounts by Letters of the Publick State and Condition of the Province under your Government; And you are forthwith to give Directions to all Masters of Ships or other persons to whom you may intrust your Letters that they put such Letters into a Bag with a sufficient Weight to sink the same immediately, in case of imminent Danger from the Enemy; And you

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are also to let the Merchants and Planters know how greatly it is for their Interest, that their Letters should not fall into the Hands of the Enemy, and therefore that they should give the like Orders to Masters of Ships in relation to their Letters; And you are further to advise all Masters of Ships that they do sink all Letters, in case of Danger in the manner before mentioned.

54.... And whereas the Merchants and Planters in Our Plantations in America have in time of War corresponded & traded with Our Enemies and carried Intelligence to them to the great Prejudice & Hazard of Our said Plantations, you are therefore by all possible Methods to endeavour to hinder such Trade & Correspondence in Time of War.

55.... Whereas it is absolutely necessary that We be exactly informed of the State of Defence of all Our Plantations in America, as well in relation to the Stores of War that are in each Plantation, as to the Forts & Fortifications there, and what more may be necessary to be built for the Defence and Security of the same, you are as soon as possible to prepare an Account thereof with relation to Our said Province in the most particular manner, And you are therein to express the present State of the Arms Ammunition & other Stores of War belonging to the said Province either in publick Magazines or in the Hands of private Persons; together with the State of all places either already fortified, or that you judge necessary to be fortified for the Security of our said Province, and you are to transmit the said Accounts to Us by One of Our principal Secretaries of State, and also Duplicates thereof to the Lords of the Committee of Our Privy Council for Trade and Plantations for their Information, and also a Duplicate thereof to Our Master General or Principal Officers of Our Ordnance; which Accounts are to express the Particulars of Ordnance, Carriages, Balls, Powder and all other Sorts of Arms & Ammunition in Our publick Stores, and so from time to time of what shall be sent to you or bought with the public Money and to specify the time of the Disposal and the Occasion thereof; And you are half yearly to transmit a general Account of the State of the Fortifications & Warlike Stores specified in the manner abovementioned.

56.... And in case of any Distress of any other of Our Plantations, you shall, upon Application of the respective Governors thereof unto you, assist them with what Aid the Condition & Safety of Our Province under your Government can spare.

57.... If any thing shall happen which may be of Advantage or Security to Our Province under your Government, & which is not herein or by your Commission provided for, We do hereby allow unto you, with the Advice and Consent of Our Council, to take Order for the present therein, giving unto Us by one of Our Principal Secretaries of State speedy Notice thereof, that you may receive Our Ratification, if We shall approve the same; Provided always that you do not, by Colour of any Power or Authority hereby given you, commence or declare War without Our Knowledge and particular Commands therein, and you are also to transmit a Duplicate of such Notice as aforesaid to the Lords of the Committee of Our Privy Council for Trade and Plantations for their Information.

58.... And whereas We have by the first Article of these Our Instructions to you directed and appointed that your chief Residence shall be at Quebec, you are nevertheless frequently to visit the other parts of your Government in order to inspect the Management of all public Affairs, and thereby the better to take care that the Government be so administered that no disorderly practice may grow up contrary to Our Service and the Welfare of Our Subjects.

59.... And whereas great Prejudice may happen to Our Service & the Security of the Province by your Absence from those Parts, You are not upon any Pretence whatever to come into Europe without having first obtained Leave for so doing from Us under Our Sign Manual & Signet, or by Our Order in Our Privy Council, Yet nevertheless in Case of Sickness you may go to any of Our Islands in the West Indies including therein the Bermuda and Bahama Islands, and there stay such a space of time, as the recovery of Your Health may absolutely require.

60.... And whereas We have thought fit by Our Commission to direct that, in case of your Death or Absence from Our said Province, and in case there be at that time

no Person within Our said Province commissionated or appointed by Us to be Our Lieutenant Governor or Commander in Chief, the eldest Councillor, being a natural born Subject of Great Britain, Ireland or the Plantations and professing the Protestant Religion, who shall be at the time of your Death or Absence residing within Our said Province under your Government, shall take upon him the Administration of Government and execute Our said Commission and Instructions and the several Powers and Authorities therein directed ; It is nevertheless Our express Will and Pleasure that in such case the said President shall forbear to pass any Act or Acts, but what are immediately necessary for the Peace and Welfare of the said Province, without Our particular Order for that purpose.

61 And whereas We are desirous that a proper Provision should be made for the Support of Our Government within Our said Province of Quebec, We do therefore hereby declare it to be Our Royal Intention, that the following Annual Salaries & Allowances be discharged & paid out of any Revenues arising to Us within the same, or out of such Monies as shall be granted or appropriated to the Uses and Services of Our said Province of Quebec, that is to say,[1]

To the Governor p^r Annum	£2000	" "
Lieut Governor	1500	" "
To the Chief Justice	1200	" "
To 6 Judges of Common Pleas £500 each	3000	" "
To the Judge of the Admiralty	200	" "
To the Attorney General	300	" "
To the Clerk of the Crown & Pleas	100	" "
To two Sheriffs at £100 each	200	" "
To the Secretary & Register	400	" "
To the Clerk of the Council	100	" "
To the Surveyor of Lands	300	" "
To the Surveyor of Woods	200	" "
To the Commissary for Indians	300	" "
To the Captain of the Port	100	" "
To the Naval Officer	100	" "
To the Receiver General of the Revenues	400	" "
To twenty three Councillors at £100 each		
To the Lieutenant Governors or Superintendants at Detroit (at £100 each)	500	" "
To one Judge of the Inferior Courts of King's Bench and Common Pleas at each of the above Posts, at £100 each Judge		
To an Assistant or Assessor at each Post, at £50 p^r Ann :		
To a Sheriff for each District at £20 p^r Annum		
To a Grand Voyer	200	" "
To a French Secretary	200	" "
To 4 Ministers of the Protestant Church at £200 p^r Ann : each	800	" "
To 2 Ministers of the Church of England settled at Sorel and Cataraqui £100 each	200	" "
To 2 Schoolmasters at £100 each	200	" "
To an Allowance to the Persons licensed to superintend the Romish Church	200	" "
To Pensions to the Officers of a Corps of Canadians employed in the last War and discharged without any Allowance, as follows, Viz^t :		
To Mons^r Rigauville the Commandant of said Corps	200	" "
To 5 Captains at £100 each	500	" "
To 10 Lieutenants at £50 each	500	" "
To the Commandant of the Savages	100	" "
To Annual Contingent Expences	1000	" "
	£	

[1] On comparing this list with the one given in the Instructions of 1775, (see p. 432), it will be found that several changes have been made, but without much alteration in the salaries. In the case of the Lt. Governors or Superintendents of the western Posts, though the Posts mentioned in the Instructions of 1775 were nearly all within the territory ceded to the United States by the treaty of 1783, yet as they had not been given up, these positions were still to be filled. The names of the Posts, however, with the exception of Detroit, are left blank.

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62 . . . And whereas We have made sufficient Provision for the Support of Our Lieutenant Governor of Our said Province of Quebec for the time being by the Allowance inserted in the foregoing Estimate, It is Our Will and Pleasure, when it shall happen that you shall be absent from Our said Province, that no Part of the Salary or any Perquisites and Emoluments, which are due unto you, shall during the Time of your Absence be claimed by, or paid and satisfied to such Lieutenant Governor: And it is Our further Will and Pleasure that if Our Lieutenant Governor of the said Province of Quebec should happen to die during such your Absence, and the Administration of the Government thereby devolve on the President or Eldest Member of Our Council, such President or Councillor shall, during his continuing in the Chief Command, receive the Salary or Allowance hereby provided for Our Lieutenant Governor, and no other allowance, Perquisite, or Emolument whatever.

G R

ENDORSED: 1786 Quebec
Draught of General Instructions.

[L.S.]

GEORGE R.

C.O. (Quebec 1768–1787, Vol. 1.)

Additional Instruction[1] to Our Right Trusty & Welbeloved Guy Lord Dorchester Knight of the most Honorable Order of the Bath, Our Captain General and Governor in Chief in and over Our Province of Quebec &ca. &ca. in America or to the Lieutenant Governor or Commander in Chief of Our said Province for the Time being. Given at Our Court at St. James's the Twenty first Day of March 1787. In the Twenty Seventh Year of Our Reign.

Whereas We did by Our General Instructions to you bearing Date at St. James's the Twenty third Day of August 1786 declare Our Royal Will and Pleasure that sundry Salaries and Allowances therein mentioned should be discharged and paid out of any Revenues arising to Us within Our said Province of Quebec or out of such Monies as should be granted or appropriated to the Uses and Services of Our said Province; And whereas We thought fit, by Our Warrant under Our Signet and Sign Manual bearing date the Sixteenth day of March 1781, to authorize and require Our Trusty and Welbeloved Frederick Haldimand Esqr (now Sir Frederick Haldimand Knight of the most Honorable Order of the Bath) at that Time Our Captain General and Governor in Chief in and over Our Province of Quebec, to cause Letters Patent to be passed under the Seal of Our said Province, constituting and appointing Our Trusty and Welbeloved William Pollock Esqr Clerk of the Crown of & in Our said Province in the Room of William Gordon Esqr deceased—And whereas the said William Gordon did over and above the Salary of One Hundred Pounds p Annum, as directed by the 56th Article of Our Instructions to Our aforesaid Captain General and Governor in Chief to be paid to the Clerk of the Crown, receive and enjoy the further Sum of Two Hundred Pounds per Annum, and which said additional Allowance the said William Pollock hath also received from the Date of his Appointment to the said Office of Clerk of the Crown of Our said Province of Quebec, untill the last usual half yearly Period of Payment, Vizt. the first day of November last.—And Whereas it is Our Intention that the said additional Allowance should be continued unto him for certain good Causes and Considerations. It is Our Will and Pleasure and We do hereby direct and appoint that the said Salary and Allowance of two hundred Pounds per Annum, in Addition to the One Hundred Pounds p Annum, which We have directed to be paid to him as Clerk of the Crown by the Sixty first Article of Our General Instructions to you, should be paid to him until such Time as Our further Royal Will and Pleasure shall be signified to you.

G. R.

[1] Canadian Archives, M 230, p. 280.

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GEORGE R.
[L.S.]

C.O. (Instructions Quebec 1786-1791.)

Instructions[1] to Our Right Trusty and Welbeloved Guy Lord Dorchester, Knight of the most Honorable Order of the Bath, Our Captain General and Governor in Chief in and over Our Province of Quebec in America, and of all Our Territories dependent thereupon. Given at Our Court of Saint James's the 25th day of August 1787 in the twenty seventh Year of Our Reign.

Whereas We have thought proper by Our Commission under the Great Seal of Great Britain to appoint the Right Reverend Father in God Charles Inglis Doctor in Divinity, to be Bishop of the Province of Nova Scotia, and have thereby given to him, and his Successors in the said See, Jurisdiction Spiritual, and Ecclesiastical, in and throughout the said Province of Nova Scotia and it's Dependencies, according to the Laws and Canons of the Church of England which are lawfully made and received in England, in the several causes and matters particularly expressed and set forth in the said Commission, and no other: And Whereas by another Commission under the Great Seal of Great Britain, we have also thought proper to give and grant to the said Bishop of Nova Scotia, full Power and Authority, by himself or his sufficient Commissary or Commissaries, to Exercise the like Spiritual and Ecclesiastical Jurisdiction, within the Provinces of Quebec, of New Brunswick, and the Island of Newfoundland as is set forth in the said Commission. We do think fit hereby to Order and enjoin you, that you do give all fit support and Countenance to the said Bishop, in the exercise of his Jurisdiction Spiritual and Ecclesiastical, according to the Laws of this Realm, and the Laws of the Provinces under your Government, and to the Tenor of the said Commissions Copies whereof are hereunto annexed: and it is Our further Will and Pleasure that you do cause the said Commissions to be forthwith Registered in the Publick Records of the said Provinces: It is nevertheless Our Will and Pleasure to reserve to you, the granting of Licenses for Marriages, Letters of Administration, and Probates of Wills, as heretofore exercised by you and your Predecessors; and also to reserve to you and to all others, to whom it may lawfully belong, the Patronage and Right of Presentation to Benefices; but it is Our Will and Pleasure that the Person so presented shall be instituted by the Bishop or his Commissary duly authorized by him, as directed by Our said Commissions.

You are to permit Liberty of Conscience and the free Exercise of all such Modes of Religious Worship, as are not prohibited by Law, to all Persons who inhabit and frequent the Provinces under your Government, provided they be contented with a quiet and peaceable enjoyment of the same, without giving Offence or Scandal to Government.

You are to take especial Care that God Almighty be devoutly and duly served throughout your Government; that the Lord's Day be duly kept, and that the Services and Prayers appointed by, and according to the Book of Common Prayer, be publickly and solemnly read and performed throughout the Year

You are to be careful that the Churches which are or may be hereafter, erected in Our said Provinces or Islands under your Government, be well and orderly kept, and that besides a competent Maintenance to be assigned to the Minister of each Parish Church, a Convenient House be built at the Common Charge for each Minister.

You shall recommend to the Legislative Council and General Assemblies, of the Provinces under your Government, to settle the Limits of Parishes, in such a manner as shall be deemed most convenient for accomplishing this good Work.

You are to use your best Endeavours that every Minister be constituted one of the Vestry in his Respective Parish, and that no Vestry be held without him, except in Case of Sickness, or that after Notice given of a Vestry he omit to come.

It is Our Will and Pleasure that you recommend to the Legislative Council or Assemblies, within your Government, to make due Provision for the erecting and Maintaining of Schools where Youth may be educated in Competent Learning, and in Knowledge of the Principles of the Christian Religion.

[1] Canadian Archives, M 230, p. 282.

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And it is Our further Will and Pleasure that no Person shall be allowed to keep a School in the Provinces under your Government, without your License first had and obtained: In granting which you are to pay the most particular attention, to the Morals and proper Qualifications of the Persons applying for the same, and in all Cases where the School has been founded, instituted or appointed for the Education of Members of the Church of England, or where it is intended, that the Schoolmaster should be a Member of the Church of England; you are not to grant such Licenses except to Persons, who shall first have obtained from the Bishop of Nova Scotia, or one of his Commissaries, a Certificate of their being properly qualified for that Purpose.

And it is Our further Will and Pleasure that in Order to suppress every Species of Vice, Profaneness and Immorality, you do forthwith cause all Laws already made against Blasphemy, Profaneness, Adultery, Fornication, Polygamy, Incest, Profanation of the Lord's day, Swearing and Drunkenness, to be strictly put in Execution in every Part of the Provinces under Your Government and that for this purpose you do direct that the Constables and Church Wardens of the several Parishes do make presentment upon Oath, of any of the Vices before mentioned, to the Justices of the Peace in their Session, or to any of the other Temporal Courts: And you are earnestly to recommend to the Legislative Council or Assemblies of the Provinces under your Government, to provide effectual Laws for the Restraint and Punishment of all such of the aforementioned Vices, against which no laws are as yet provided, or in Cases where the Laws already made, are found to be insufficient And in order to discountenance Vice and promote the practice of Virtue to the utmost of your Power, we do hereby strictly command and enjoin you, to appoint no Person to be a Justice of the Peace, or to any Publick Trust or Employment, whose notorious ill Life or Conversation may occasion Scandal.

G R—

ENDORSED: Instructions For Lord Dorchester Governor of Quebec Dated 25th August 1787.

CHIEF JUSTICE SMITH TO NEPEAN.[1]

QUEBEC 2d Janr 1787.

Dear Sir,

I avail myself of the Return of an Express from New Brunswick, for a Line that may arrive from St John's or Hallifax, before the February mail from New York; wishing you to be authentically informed, and the Government thro' you, as soon as possible, of an Event of no small consequence to the public Welfare.

The first cause I found in the Court of Appeals, raised the important Question, whether a subject of Controversy, in which the Parties were English, as well as all that are interested under them, and no Canadian concerned in the remotest Degree, called for a Decision by the English or French Law? We reversed the Judgment of the Common Pleas, which had in the most express Terms, held the Doctrine, that the Quebec Act brought every Dispute of Property without any Exception, to the Test of the old Laws of the Colony prior to the Conquest.

The opinion of the Common Pleas, had alarmed or disgusted all the English Inhabitants, And Appearing to me to be inauspicious to the Commerce, Population and strength of the Colony, and as ill founded as it was Dangerous, I did not meerly consent to the Reversal, but took up some time in shewing, that in a case in which to do Justice, Resort must be had to the French Code, *that Law* gave the Rule, and that the Action and the Proceedings in it, ought to be in strict conformity to the Quebec Act and the Provincial Ordinances; and where these were silent, to the French forms of Practice, as

[1] Canadian Archives, Q 27—1, p. 18. Wm. Smith, formerly Chief Justice in the Province of New York, came out with Lord Dorchester as the new Chief Justice of Quebec Province. He exercised an important influence in bringing about a change in the form of government.

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far as the Modes materially influenced the object and end of the Suit. And on the other hand, that where the Cause was as purely English as the other was French, and Justice required a Reference to the English Law, *this Law* was the Test; and that if the same Statute and the Ordinances, did not authorize or justify a Deviation, the Practice of the Courts in England, directed the *main* Progress and conduct of the Suit.

Upon the Ground of these Discriminations, I saw Safety, both to the Canadian and the British; and to both Ruin, by an exclusive adoption of either System, for by the daily Interchange of Property, and especially in the fifteen years antecedent to the Quebec Act, the Inhabitants became Fountains of Title to each other—And as to the manner of conducting the Suit, it seemed fit that as the shadow, tho' he is a bad Lawyer that Supposes it to be no more, it should follow the substance, the French Practice, if the cause was that the Quebec Act makes a Canadian Cause, and the English, where it was not by that Act made a French one.

To clear these Points, I reasoned upon the origin of the Statute, and its Recognition of *two* classes of Subjects, and upon the Fabric of Government erected by the Executive under it. I gave some scope to the Argument ab in con venienti; in stating the consequences of the contrary opinion, as injurious to the National Sovereignty, and the general commerce, and tending not only to shake the Foundations of every man's estate, but by preventing British Accessions to the Country, and driving out of it the Thousands of Loyalists that have already taken refuge here, it would be reduced to a state of Debility, exposing it to the first Power, that might think it worth the trouble of an Invasion.

The Doctrine of the Common Pleas, I find is as *novel* as it is mischievous. It had been never before solemnly avowed—Their Judgment passed 14th Jany. 1786. Lt Governor Hope, a few days after, granted the Writ of Appeal, returnable on the 6th of March, and it remained suspended at the Time of our arrival. I do'nt recollect that any of the invective Pamphlets, against the statute, and the administration that promoted it, tho' very free against its creating a dependant Legislature without an Assembly, & its Indulgence to the Catholics, ever made it a charge, that it subjected English Property, wholly and without any exception to the civil Jurisprudence of France.[1] Had it been so understood the Commerce of the Colony must have been extinguished.—There were not wanting Malcontents, both in the old Provinces and the Mother Country, to teach the Merchants that no Contract of Confidence here could be safe, without the previous Counsel of a French Advocate, for inflaming the Discontents of the Day. The Ideas of the Common Pleas are therefore, as I said, new, and I believe originated in the Colony.

The Parties in the cause that came before us were, Alexander Gray, Curator Bonorum, of his Father Alexander Gray of Edinburgh, who had been Administrator of his Brother John Gray against William Grant a Debtor to John Gray—Robert Grant who was appointed by the Purogative Court of Canterbury, Administrator to the said John Gray, and Administrator also de Bonis non of the said Alexander Gray, appeared also in the cause, as *Partie intervenante*, and both he and William Grant were Appellants. What might remain of the Personal Estates of these Intestates John Gray and Alexander Gray, after satisfying their Creditors in Great Britain, belonged to Alexander Gray's four Children; all Resident at Edinburgh, except his son Alexder Gray, the Plaintiff in the suit; a Scotch Attorney, who came here after his Father's Death and taught the Judges of the Prerogative Court of the Province, (Messrs Mabane, Dunn, and Panet, two of them the *very same*, who gave the Judgt in the Comn Pleas in confirmation of their own adjudication in the Perogative Court, that it was not necessary to become Administrator, to acquire the Funds of the Intestates, but that under the *French* Law, he might decline accepting a share of the Inheritance devolved upon him by that Law, and obtain his end by their Appointment of him as Curator Bonorum, or Guardian of the Succession or Goods of his deceased Uncle and Father.

The Court of Appeals was satisfied, that these Steps were as repugnant to the French Law, as they were to the Laws of England; and this Question we handled as well as the other; & we had but one opinion, with the exception of Messrs St Ours and

[1] See notes 1 & 2, p. 389.

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Delery, two Canadian Gentlemen, to whom all I said, by their Inexperience in the English Language, must have been utterly unintelligible.

The sum in Controversy (between £8 and £900) is high enough to give the Respondent his Appeal, but he will probably prefer a new Suit as Administrator.

The great Question may very soon, and very often occur; and as it is of such infinite moment, I thought it proper that His Majesty's Ministers should be early apprized of the Event; that by their commands, we may receive the Light and Aid, which the King's Law servants are so able to afford.[1] All turns upon the simple but important Question,—Whether by the Quebec Act, the old Laws, and old Forms of Canada, give the Rule *exclusively*, in all controversies relating to Property in this Country, and bind in *every* Suit litigated in the Courts of Quebec, tho' the Parties and all Persons interested in it be His Majesty's natural born Subjects?

I beg my best Respects to Lord Sydney, and am,
my dear Sir.
your most obed^t and most humble Servant

W^m SMITH.

Evan Nepean Esq^r

FINLAY TO NEPEAN.[2]

QUEBEC 13^th february 1787

Dear Sir

Tho' we have been a month in Council we have not as yet debated on any one Ordinance: the Chief Justice has proposed three; they lie on the table. The draught of a Militia Law is now before a committee; that, and the regulation of the Courts of Justice are objects of the first moment.

A well establish'd Militia will secure the Province, and if the King's Ancient subjects (comprehending the Loyalists) can but have English Law for the rule of decision in English causes, as laid down in his Majesty's 12^th Instruction,[3] they'll be contented and happy: but our Judges of the Common Pleas set their faces against the introduction of English Law in all cases whatsoever; They say that they are warranted by the Quebec Act to declare and to uphold, that the intention of the King and Parliament was, that no Law but French Law should subsist in Canada, the English *Criminal* Law excepted.

Some people affect to call the King's Natural born subjects, *new Canadians*—He who chose, say they, to make Canada his place of residence lost the name of Englishman. The Old Canadians are those we conquer'd in 1760 and their descendants, the new Canadians are composed of emigrants from England, Scotland, Ireland, and the Colonies now the United States: by the Act of the 14^th of his present Majesty[4] they are converted into Canadians, and Canadians they must ever remain. This doctrine is pleasing to the Noblesse or gentry of the Country, who will not easily get rid of French prejudices;—but to cherish a predilection for every thing that is french, is not, in my opinion, the most likely means to make Englishmen of the Canadians. It is held here by some of His Majesty's natural born subjects, that the natives of this Province ought, as much as is possible, to be kept unmixed and unconnected with the other Colonists, to serve as a strong barrier, between our Settlements and the United States, "Its inhabitants are numerous, and by Religion, Language, Laws & Customs are the class of "men the least likely to coalesce or unite with the neighbouring States of America"[5]

[1] The question raised by Chief Justice Smith having been submitted to the British Attorney General and Solicitor General, they reported that the points raised by the Chief Justice as to the law which should prevail in Canada, were so important that an appeal should be made to the Privy Council for a decision.
[2] Canadian Archives, Q 28, p. 302.
[3] See p. 555.
[4] The Quebec Act. See p. 401.
[5] For an earlier expression of these views, see Carleton to Shelburne, p. 196.

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Unless the Canadians can be brought to perceive that it is their intrest to be attached to Great Britain, they will lean towards that Government which they may erroneously have conceived best calculated to promote their welfare ; we ought not to forget their lukewarmness in 1775—the better sort of the people in general, and the Clergy, behaved well, but we had little or no assistance from the peasantry, and all this arose from the insinuations of the Colonists, touching the supposed intention of the King and Parliament in passing the Quebec bill : it seems at present the wish of those who prefer french Law, and french Customs, to inculcate, that *if we introduce the English Commercial Law, the Estates and property of the Canadians will be annihilated*, and this has had an effect, and has produced some applications to Lord Dorchester, praying him to prevent the introduction of English Law in any case. These applications were founded on error.

I shall not even pretend at this day to guess how matters may go in Council this Session, tho' a Majority seem unwilling that any alteration should take place in the present System.

The English who carry on, I may say, 9/10ths of our Trade, pray for the introduction of the Commercial Law of England, and so do the Loyalists, who understand as little of the French Law, as of the French language.

Lord Dorchester will examine with attention & treat with candor the Reports now before him.[1]

I here take the liberty to trouble you with my opinion, that the introduction of the English Commercial Law can in no wise affect "the Titles or tenures of Lands or "the descent, alienation, incumbrances and settlements of real Estates, or the distribu-"tion of personal property of persons dying intestate," but if any inconvenience *should arise* from the introduction of the Commercial Law of England, the Legislative Council will have it in their power to remedy the evil : but I cannot help again observing that I do not conceive how the Laws of Commerce can affect the real property of any Canadian ; the ignorant or the designing may have sounded this alarm to procure applications to prevent the wishes of the Mercantile body from being complied with.

I am with real esteem, and much regard, Dear Sir

Your ever obedient and most humble servant

HUGH FINLAY

Evan Nepean Esq^r

(original)

FINLAY TO NEPEAN.[2]

Quebec 15th March 1787

Dear Sir

We have passed but one Ordinance this Session to ascertain the Qualifications of Jurors in Criminal causes ; it was brought in by Mr. Smith, but sadly Mutilated by the Council. We wait the Chief Justice's return from Montreal before we take the Bills now before us under consideration, he is on his Circuit.

The most important Bills now on the Table are One "For the better administra-"tion of Justice, and to regulate the practice of the Law"[3]
One "For the relief of the Poor by the Dispensation of Justice in small causes" one "For regulating the Militia" and another "For lodging the Troops in the Country "Parishes, and for the transport of King's Provisions &c"
the two first were proposed by the Chief Justice. In the face of them was brought in by a Canadian Member,[4] a Bill entitled "An Ordinance to regulate effectually the pro-

[1] Referring to the Reports being prepared by Committees of the Council in 1786—87. So far as these bear upon the constitutional questions they are given below.

[2] Canadian Archives, Q 28, p. 306.

[3] This draught of an ordinance, as introduced by the Chief Justice, is given below, following this letter.

[4] Paul Roc de St. Ours.

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"ceedings in the Courts of Civil Jurisdiction" and 'tis proposed to do this, by depriving the King's natural born Subjects of the benefit of trial by Jury in mercantile causes, and by substituting the French rule of evidence in commercial trials, in lieu of the English rule. M[r]. Smiths Bill ought first to be considered, if we observe order; but attempts have been made, and they will again be made to have both Bills presented to the same Committee at one and the same time, to be blended & considered as but one Project. *A Canadian Gentleman*, say those who pique themselves on their Noblesse, *will ever look on it as an indignity to be tried by their Peers, if men in Trade are to be considered in that light*;—Whilst those very merchants whom they affect to despise may be far their Superiors in point of Birth Education and Fortune;—Mais c'est un homme commerçant, et tout est dit. However, as Juries are optional, the Canadian may elect another mode of Trial; all contraversies touching his landed property and his civil Rights are to be decided by the ancient Laws of the Country.

The gentry will retain those prejudices (the noblesse are a small proportion indeed of the Canadians) whilst the Judges, English Judges! take pains to disparage that mode of Trial. Would the French members of our Legislative Council but read the Works of some illustrious writers who treat of Government in their own language they would learn to prize the blessing of a trial by Jury. Though *they* like it not, why wish they to deprive Englishmen of that which they hold so dear? It is because they have been lately taught to believe that the introduction of the Commercial Law of England, will destroy the Security of their Possessions, and in time totally overset their municipal Laws, and this apprehension has arisen (as I have heard) from a late harangue from the Bench in the Common Pleas made in order to refute a doctrine advanced by His Majesty's Chief Justice in the Court of Appeals on the 29[th] of Dec[r].[1] None of the Judges of the Common Pleas were there present when Mr. Smith enlarged on the intent and meaning of the Quebec Act relative to the rule of decision in certain Contraversies, so that they must have spoken from *hearsay*. I was in Court and took notes. I trouble you with the substance of what Mr. Smith said. I was not a little pleased to find that I had always been of Mr. Smith's opinion.

In consequence of very reprehensible misrepresentations, and artful insinuations, fears were awakened; and those who dread the introduction of the English Commercial Law, because ignorant of it, profited by alarms which they contributed to raise, & procured addresses to the Governor General expressive of apprehensions that the Canadians are about to lose the Benefits accorded to them by the Quebec Act. Another ground of alarm was the Report from the Committee of Merchants, to the Committee of Council on Commerce and Police.[2] The French Advocates, it is said, were very busy in representing this as a glaring attack on the Civil Rights of the People of Canada.

To undeceive the Canadian People, and to quiet their minds, and in order to prevent falsehoods from spreading, some well intention'd Gentlemen beg'd leave to print the Chief Justice's Bill:—I take the liberty to send you a copy of it.[3]

The King's natural born subjects have been disquieted by a late proposal made by a Canadian Member of the Council, which would deprive the mercantile body of the benefit of Trial by Jury in Commercial causes, and their fears were not lessen'd when the Council refused to let them have a copy of the Bill alluded to; They had for answer to their Petition—That the Prayer of it, is of a nature not to be granted. I enclose a copy of the petition. The voices were equal, but the nays carried it, on the Parliamentary rule of, Semper presumetur pro negante.

I beg your pardon for troubling you with two letters for my friend Colonel Skene.

I have the honor to be, with very great esteem,

Dear Sir

Your obliged servant

HUGH FINLAY

Evan Nepean Esquire.
(original)

[1] Referring to the points discussed in the foregoing despatch of the Chief Justice, of Jan. 2nd. See p. 569.

[2] Given below, see p. 614.

[3] This is the draught ordinance which follows this letter.

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DRAUGHT OF ORDINANCE FRAMED BY CHIEF JUSTICE SMITH.[1]

Draught
of an
Act or Ordinance
for the better Administration of Justice,
and to Regulate the Practice of the Law,
in the
Province of Quebec:
Now laying on the Table of the
Honorable Legislative Council.
Introduction.

The Copy of this Draught of a Bill brought into the Council by the Honourable the Chief Justice, and now laying on the Table, was procured by some Gentlemen of Quebec and Montreal, and is printed at their own expence, to prevent mistakes and to set those to right who may have erroneously conceived that it has lately been in contemplation of any person or of any set of people in this province, to procure alterations in the Laws, unfavourable to His Majesty's Canadian Subjects, affecting either their property or civil rights: and they presume, the attention paid to the preservation of both, in the proposed Bill, will dissipate every uneasiness that may have been raised on that account, in the minds of their fellow-subjects.

Quebec 12th March 1787

Draught
of

An Act *or* Ordinance *for the better* Administration *of* Justice, *and to* Regulate *the* Practice *of the* Law.

Whereas by a certain Statute passed in the fourteenth year of his Majesty's Reign, intituled "An Act for making more effectual Provision for the Government of the Pro-"vince of Quebec in North America," It is among other things enacted, that all his Majesty's Canadian Subjects within the Province of Quebec, the *Religious Orders and Communities only excepted*, may hold and enjoy their Property and Possessions, together with all Customs and usages relative thereto, and all other their Civil Rights, in as large, ample and beneficial manner, as if a certain Proclamation and certain Commissions, Ordinances and other Acts and instruments in the said Statute referred to, had not been made, and as may consist with their allegiance to his Majesty, and subjection to the Crown and Parliament of Great Britain, and that in all matters of Controversy, relative to Property and Civil Rights, resort shall be had to the Laws of Canada as the Rule for the Decision of the same, and that all causes that should thereafter be instituted in any of the Courts of Justice to be appointed within and for the said Province by his Majesty, his Heirs and Successors, should, with respect to such Property and Rights, be determined agreeably to the said Laws and Customs of Canada, until they shall be varied or altered by any Ordinances that shall from time to time be passed in the said Province by the Governor, Lieutenant-Governor or Commander in Chief for the time being, by and with the Advice and consent of the Legislative Council of the same, to be appointed in manner in the said Statute aforementioned.[2]

And whereas two certain Ordinances of this Province have been passed for regulating the practice in the Courts of Civil Judicature, the first[3] of which was in force from the time of its being enacted in the seventeenth year until the twenty-fifth year of his Majesty's Reign, when a new Act[4] was passed for that purpose with divers alterations, which is nearly expiring.

[1] Canadian Archives, Q 56—3, p. 679.
[2] See The Quebec Act, pp. 403–404.
[3] The Ordinance of 1777. See p. 466.
[4] The Ordinance of 1785. See p. 529.

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And Whereas his Excellency the *present* Governor of the said Province hath been pleased to communicate to the Legislative Council, divers Articles of his Majesty's Instructions respecting the Administration of Justice, the twelfth article whereof is in the words following, to wit:

"The Establishment of Courts, and a proper mode of administering Civil and "Criminal Justice throughout the whole extent of our Province, according to the prin- "ciples declared in the said Act for making more effectual Provision for the Govern- "ment thereof, demand the greatest care and circumspection, for *as on the one hand* it is "our gracious purpose, conformable to the spirit and intention of the said Act of "Parliament, that our Canadian Subjects should have the benefit and use of *their own* "*Laws*, Usages and customs *in all* controversies *respecting* Titles of Land, and the "Tenure, Descent, Alienation, Incumbrances, and Settlements of Real Estates, and the "distribution of personal property of persons dying intestate; so *on the other hand* it "will be the duty of the Legislative Council to consider well in framing such Ordinances "as may be necessary for the Establishment of Courts of Justice, and for the better "administration of Justice, *whether* the Laws of England may not be, *if not altogether*, "at least in part the rule for the decision in all cases of personal actions grounded upon "debts, promises, contracts and agreements, whether of a mercantile or other nature, "and also of wrongs proper to be compensated in damages, and *more especially where* "our natural born Subjects of Great Britain, Ireland or other Plantations, residing at "Quebec, or who may resort thither, or have credit or property within the same, may "happen to be either Plaintiff or Defendant in any Civil suit of such a nature."[1]

And whereas the Commerce of the Province is almost intirely in the hands of Merchants who are his Majesty's natural born subjects, and it is essential to the encrease and tranquility, growth, prosperity, and strength of the Province, that the administration of Justice be *regulated in such manner as to give safety*, not only to all the inhabitants of the Colony, but to such of their fellow-subjects as they may have intercourse with in other parts of his Majesty's dominions, and especially in Great Britain and Ireland, from whence those supplies and credits are chiefly to be obtained, by which the raw materials and natural resources of this extensive Province are to be drawn forth into the common stock and commerce of the British Empire.

And whereas the aforementioned Ordinances, on account of the peculiar condition of the Country, under a recent change of Government, could *only be laws of experiment* and temporary expediency, to be altered and amended as occasion might require for perfecting the security of all his Majesty's subjects, and the said Ordinances *have not given the satisfaction expected by the people* for the safety of *their rights and property*, and especially in the proceedings that affect their important concerns of a Commercial nature.

And whereas at the close of the late war on this continent, his Majesty was pleased in his great wisdom and grace to afford a refuge in this part of his Dominions, to many thousands of his natural born Subjects from the United States of America, who having suffered the loss of their Property for their faithful adherence to his Government and attachment to the British cause, are become objects of the national confederation, and are chiefly collected together upon divers parcels of the waste lands of the Crown, and their relief and comfort require very special Provision, suited to their circumstances, *that* all the inhabitants of the Colony, tho' originally of different Provinces and Governments *may be United* in *Harmony* and Mutual affection, under the Gracious and Benevolent protection of their common Sovereign;

§1 Be it therefore enacted and ordained by his Excellency the Governor and the Legislative Council, and it is accordingly hereby enacted and ordained by the authority of the same, that for the better encouragement of his Majesty's Subjects, and their Ease and convenience under a due administration of Justice, it shall be lawful for his Excellency the Governor, or the Commander in Chief of the Province for the time being, with the advice of the Council, by Patent under the Great Seal of the Province, to form one or more new Districts therein, to be afterwards Organized by Com-

[1] See Instructions to Lord Dorchester, 1786, 12th article, p. 555.

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mission and Commissions for the Creation and appointment of all such Offices and Officers within the same, as may appear to be most necessary or conducive to the purposes aforesaid, any thing in any former Law or Ordinance of the Province contained to the contrary thereof notwithstanding.[1]

And for the security and contentment of such of his Majesty's Canadian subjects as have, or may have Property in such new District or Districts. Be it further enacted by the same authority that in all their controversies respecting Titles of Land, and the Tenures and Descent, Alienation, Incumbrances, and settlements of Real Estates, and for the distribution of Personal Property of persons dying intestate, such Proceedings shall be had therein as will give them the full Benefit and Security intended by the Statute abovementioned, and that every clause and Article in any of the said Patents and Commissions for forming Such new District and Districts, and the administration of Justice in the same to the contrary, shall as to his Majesty's Canadian Subjects be absolutely null and void.

And for amending the present Ordinances relating to the course of Judicature in Civil Causes.

§2. Be it also enacted by the same Authority, that the Courts of Common Pleas shall have no cognizance of any new cause to be legally brought in any of the Courts of Request after the erection of the same, by Virtue of another Ordinance of the present Session, entituled, *" *An Act or Ordinance for the relief of the poor by the Dispensation " of Justice in small Causes.*"

* The Bill here referred to, enables the Governor by Letters Patent, to parcel out the Province into Precincts or Circles comprehending several contiguous Parishes, and to appoint in each Precinct three commissioners from the principal Inhabitants; and authorizes them, or any two of them to hold a Court of Requests once a month, or oftener if need be for the Precinct.

There is to be a Clerk for every Circle to keep an Office and give out the Summons or Process.—A Serjeant to execute the Process is in the appointment of the Commissioners.

The Court of Requests is competent for causes under £10, except in certain causes involving questions that are not proper for a summary decision.

The Court is minutely directed, and the Judgements final without Appeal, because the main object is to relieve the poor and the distant inhabitants.

For the same reason the Fees are low and the proceedings quick, and very plain and simple.

The Bill proceeds upon the Supposition, that there are public spirited Gentlemen to be found up and down the Country, who will not refuse in turn to be Judges between their neighbours; for they are not to have authority out of their own Circle.

As it is possible that the Commissioners in some Circles, may not be able to afford to give so much of their time to their Countrymen as may be required, a fee is allowed to the sitting Judges on every Judgement; if they please to take it.

The Governor may form a Circle as soon as he finds fit Commissioners for it, and they may dispense Justice in either language.

Nothing is made a requisite qualification but integrity and a good sound understanding. The Judges will be standing Arbitrators for their Circle.

All the Officers of the Court of Requests are to be upon Oath. There are Guards against perjuries, contempts and Extortions.

Until a Parish is in some Circle, the old Course of *Tournée*, is to continue there, and when incircled it is to cease as to that Circle and all the Parishes it includes, and the Inhabitants be saved from all the waste of time, trouble, and charge of referring for Justice to Quebec and Montreal: and it is thus hoped that a general Spirit of useful Industry will spread through the Province, and contentment be given to all, as their differences will thus be speedily adjusted, by those to whom, as neighbours, they may have easy access, and by whom the Parties will be known.

These Commissioners are not to be Justices of the Peace, nor the Justices to be Commissioners, the confounding these Trusts in the same Person being subject to many objections, as former experience has shewn here and elsewhere, in the low Character of Trading Justices as they are called.

The Justices are to be left to their proper business in preserving the public Peace, and preventing and punishing Crimes. *Private Disputes* will be settled by the Commissioners in the Court of Requests for the people, by their own Countrymen, and as it were at their own Doors, and according to good Conscience and their own usages, and in their own language, every man managing his own cause by himself or his friend. No Lawyers to be there, unless both Parties chuse to have their assistance.

[1] Appended to this paragraph is the following marginal note, evidently inserted by Finlay when sending the draught:—" this first Section of yᵉ Law, with the §7 was to introduce the Laws of England into all the upper part of the Province, and among all the old Subjects in the lower part; and leave the Canadians to the Coutume &cᵃ until they should be *Enlightened*." Though this bill did not pass, yet in the Ordinance for continuing for a time that of 1785 to regulate the Proceedings in the Courts of Civil Judicature, being 27 Geo. III., cap. 4, a clause was introduced providing for the erecting of new Districts and for their administration. See below p. 583.

[2] This is the title of a bill or draught ordinance, summarized by Finlay in the appended note, which was also introduced by the Chief Justice but which failed to pass. In the Ordinance however of 27 Geo. III., cap. 4, which continued the old Ordinance with some amendments, a clause is introduced, " Respecting Dispensation of Justice in Small Causes," which secures the central object of this bill. See below, p. 583.

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And respecting the Trial of Causes above Ten Pounds sterling, and such beneath that Sum, of which the Courts have cognizance, the same shall be proceeded in, heard and determined only in regular Terms, consisting of the first 14 days, Sundays and Holydays excepted, in the months of June, August, October, December, February and April yearly, the first return days whereof shall always be the first day of the Term, and the rest and the general Rules of Practice, such as the respective Judges of the Common Pleas may state in a formulary, and present to the Provincial Court of Appeals, who shall have authority from time to time to establish the same.

rules of practice to be made by Com. P. & estab. by Co. of Appeals.

And it being *indispensibly requisite* to the safety of Property in every suit at Law, *to exclude* all Legislative authority *from being united with the exercise of the Judicial Power* of the said Courts of Common Pleas, lest the Estates and Rights of the People should be subject to the erroneous or arbitrary opinions of the Judges.

§3. Be it enacted by the same Authority, that in every Instance where the fact is not verified by a Verdict of the Jury, but by other proof, or the testimony of witnesses, the same shall be inserted in the Record of the Cause, that in Case of Appeal, the whole Proceedings may go up to be adjudged in the Superior Tribunal, as regularly, and as fully as the same was before the Court below.

And *wherever the opinion or judgement of the Court*, is pronounced upon any Law, usage or custom of the Province, the same *shall* in like manner be *stated upon the Minutes or Record of the Court, and referred to and ascertained, that the real Ground of the Opinion or Judgement* may also appear to the Court of Appeals, AND UPON ALL opinions conceived by any Party to be to his Injury, he shall be allowed his exception to be preserved in the minutes, all which proceedings shall be transmitted under the Signatures of the Judges or any two of them, and the Seal of the Court, that all his Majesty's subjects, and especially his Canadian subjects, by these means may be effectually protected in the enjoyment of all the Benefits secured to them for their Property and Civil Rights by the Statute and Ordinance aforesaid.

And to take away all doubts and scruples with respect to the Right of Appeal in any Cause before the said Courts of Common Pleas,

§4. Be it enacted and declared by the same authority, that the Court of Appeals shall be deemed and adjudged to have an Original Appellate Jurisdiction with all the Power necessarily annexed to such Jurisdiction, and *that* it shall henceforth *belong* to the provincial Court of Appeals *to determine the Question when security shall be requisite and the sufficiency thereof*, and the Admission, Dismission or Remission of Appeals, and the supply of the *Defects of the Record*, and of the effect of the Appeal as a Supersedeas of all or any Proceedings in the lower Courts for the stay of Execution on the Judgements of the same, or any Process of the nature of Execution, with *authority also to make rules aud orders to regulate, effectuate and accelerate the Proceedings in all causes of Appeal* for the Advancement of Justice, and to prevent unnecessary delays and expence in the same.

And to strengthen the security of the subject for his Estate and Rights, even in the said Court of Appeals;

§5. Be it further enacted and ordained, by the same authority, That none of the Members of the Court of Appeals shall presume to sit upon the Bench thereof, until he shall have taken an Oath before the Governor for the time being, that he will faithfully serve our Lord the King and his People, in the Office of Judge of the Court of Appeals in this Province, and that he will do equal Law and Execution of Right to all the King's Subjects, rich and poor, without any regard to any person, that he will not take gift or reward of any man that shall have Plea or Process before him, and that he will deny no man common right by the King's letters, or any other man's, and that in case any letters come to him contrary to the Law, that he will do nothing by such letters, but certify the King thereof, and proceed to execute the Law according to the best of his Knowledge and Judgement.

§6. And be it also enacted by the same authority, That it shall be *sufficient to disqualify* any Member of the Legislative Council from sitting as *Judge in any Cause of Appeal*, that he is interested in the event of it, or related to either of the parties interested in the same, or that he is a Judge of *either* of the *Courts* of Common Pleas, or that he was absent at any former hearing in such Cause of Appeal.

And because his Majesty's Canadian Subjects *cannot suffer* detriment by trials *according to the English Laws* and course of practice in controversies *in which they are not concerned*, between his Majesty's natural born subjects, *who have also their predilection* and attachments to the modes of trial conformed to their own customs, and in deference to his Majesty's instruction above recited ;[1]

§7 Be it also enacted, That as often as the Party plaintiff in a cause, *being one* of his Majesty's natural born subjects, *shall commence* his Action against another person that is *not* one of his Majesty's Canadian subjects *according to the course of the common Law, the same Cause shall proceed to the end thereof in the same course, and have all its legal consequences and effects, as if the same had been begun and prosecuted in the Common-Pleas of Westminster-Hall*, as nearly as the condition of the Province will permit ; and for the fullest security of his Majesty's Canadian subjects in the enjoyment of the ancient Laws, Usages and Customs of Canada, every such suit shall abate whenever the defendant shall plead or alledge that he is one of his Majesty's Canadian Subjects, or descended from any person that was so at the Conquest, in the paternal or maternal line, and the question of fact, whether he is or is not, *shall be tried* and determined by the Court *without a Jury*, and if the facts shall be found for the Defendant by the Court in manner aforesaid, judgement of *non pros* shall be entered against such Plaintiff for the Defendant, and the Defendant recover his Costs.

§8. And be it also enacted by the same authority, That in all causes where the Sheriff is a party, *or shall appear to the Court to be exceptionable and not indifferent* between the parties in any cause, the process shall go to the Coroner.

§9. And where Appeals are brought by executors, administrators or guardians, the Plaintiff shall not have execution nor any process in the nature of execution, without such security first given as the Court of Common-Pleas in their discretion shall direct, to refund the damages and costs in case the judgement shall be reversed, together with such costs as the Court of Appeal may award.

And whereas *great inquietudes have arisen in the Colony within four years past*, respecting certain processes against estates and effects, seizing and arresting the same, *and divesting* the proprietor thereof *without previous trial and judgement* at law between the parties, which proceedings pass in France under the name of *saisie arrêts*, and *saisie exécution, tho' they are there* exercised under special guards, would be very mischievous if practiced against the poor inhabitants of this province, and especially as *the Sheriffs* and the subordinate executive agents *are not yet* under *any bonds with sureties* for their demeanor, and it is more expedient in so infant a country to leave Creditors in general to the caution prudence requires against negligent confidences, *than to introduce the rapid measures of ancient* and populous nations against complicated frauds and bankruptcies.

§10. Be it further enacted by the same authority, That no such process shall hereafter be issued except for attaching the estates and effects of persons concerned in traffic, and only then for debts exceeding the Sum of Fifty Pounds Sterling, after Oath before the Judge issuing the same, of the amount of the debt and of the demand of payment thereof, and that there is good cause to apprehend the loss of the debt without such process, which oath shall be indorsed thereon.

[1] In connection with this clause there is inserted the following marginal note :—"To introduce the Com. Law of England as y^e^ Rule &^c^ between y^e^ old Subjects conformable to opinion & Judg^t^ in Appeal ded^r^ 1786. Case Grant v Gray and conform y^e^ new Subjects or Canadians to y^e^ Coutume de Paris & Civil Laws." This refers to the judgment delivered by the Chief Justice and which gave rise to much discussion. It is referred to in the letter from Chief Justice Smith to Nepean, see p. 569, also in that of Finlay to Nepean, see p. 572. The judgment of the Court of Common Pleas is given in Q 27-1, p. 28, and the judgment in appeal at p. 26.

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And the seizure to be afterwards made shall remain in the hands of the Sheriff, subject to such orders as the Court may afterwards take respecting the same. But whenever the Owner thereof shall either pay the debt and costs or give security to answer the value of the same, and to abide the judgement of the Court, the Estate and effects so seized shall be forthwith restored.

And in the prospect that the aforementioned amendments and alterations in the Civil Jurisprudence *will suffice* with the provisions already made by the former Ordinances until experience shall direct to such improvements as the case of *all* his Majesty's subjects whether Canadian *or others may require* for the perfect establishment of their property, rights, and interests, *and for promoting their mutual affection* and the general tranquillity of the province, by the removal of every jealousy and discontent injurious to the King's government and the common welfare;

Canadians to ask y^e Eng. Com. Law.

Be it therefore enacted by the same authority, That the Act or Ordinance passed in the twenty-fifth year of his Majesty's Reign, intituled, "An Ordinance to regulate "the proceedings in the Courts of Civil Judicature, and to establish trials by Juries in "Actions of a commercial nature, and personal wrongs to be compensated in damages,"[1] so far as the same is not altered and amended by the provisions in this Act above contained, shall continue to the day of April, which will be in the year of our Lord one thousand, seven hundred and eighty-nine, at which time this Act for making the several amendments therein aforementioned shall also expire.

Finis

EXTRACT FROM PROCEEDINGS OF COUNCIL.[2]

Monday 26th March 1787.

His Honor The Lieutenant Governor, and all the Other Members above.

(William Smith Esq^r. C. J., Mr. Harrison, Mr. Mabane, Mr. De Lery, Mr. Fraser, Mr. Grant, Mr. Baby, Mr. Holland, Mr. Boucherville, Mr. Finlay, Mr. Collins, Mr. Pownall, Mr. Bellestre, Col. Caldwell, Mr. De St. Ours, Mr. De Longueüil, Sir John Johnson, Dupré.)

The Chief Justice presented a Protest signed by him and the eight other Members against the Vote of the Council upon the Question of the 22^d instant for the Committment of the Bill for the better Administration of Justice, and to regulate the practice of the Law.—Read the same—Ordered to be translated, and entered on the Journals.

THE PROTEST.

First—Because the refusal to commit the Bill, implies a disapprobation of every part of it as incapable of being so altered as to retain a single Clause, and amounts as clearly to a rejection of every paragraph of it, as if each had been Separately Voted to be struck out; and it was so explained and understood, and that intention avowed by every Speaker against the Committment.

Second—Because the regulations for the Administration of Justice in all the Courts of Common Pleas, as well as in the monthly Court of Appeals, were so obviously expedient to the eye of meer abstract Theory, as to require only to be read to be approved and might have been contended for by the Judges without any disparagement of Character or Office, and served for no mean defence against the clamours and complaints, to which Courts where the Judges find both law and fact are obnoxious; and especially in such a Country as this, where they also hold the mighty trust of settling the Question, what was or was not, the custom and usage, as well as the Law of the Colony antecedent to the Conquest.

[1] See p. 529.

[2] Canadian Archives, Q 27–2, p. 645. At the session of the Legislative Council, on March 22nd, the Chief Justice moved, with reference to his bill "for the better Administration of Justice, and to regulate the practice of the Law," "That this bill be committed to a Committee of the whole Council for Friday the 30th instant," and the motion being put it was defeated by ten to nine. At the next meeting of the Council the Chief Justice and his supporters registered their protest. See Q 27–2, p. 643.

Third—Because one of the best securities for the permanent duration of the privileges granted by the Statute commonly called the Quebec Act to His Majesty's Canadian Subjects is their ready manifestation of a correspondent liberality to his Majesty's Native born Subjects thro' the Voice of that Legislature which the Statute erects, of which His Majesty has constituted so many of the Canadian Gentlemen to be Members. The Bill pointed to a measure for shewing such a disposition without the smallest Infringement of the Benefits granted by the British Parliament to themselves and it had succeeded if only one of them had given his Voice for the Committment, the question being decided by the Chair.

Fourth—Because the postponing the relief which according to this Bill the Governor was to be enabled to afford to the American Loyalists settled on our Frontiers, to us appears inconsistent with the Interests of the Crown, and repugnant to every motive of sound policy as well as the Sympathy we ought to have for those, who with so much honor to themselves have sacrificed every consideration of Private Interest to their faithful affection for their Sovereign and the British Cause, and to whom as Subjects of tried Loyalty and men of Arms this Province may one day be obliged to look for its defence and protection; to say nothing of what became the King's Servants here to have done for Sufferers of such distinguished merit, in Obedience to the Royal commands communicated to General Haldimand by a Letter from Lord North of which the following is a Copy.

Whitehall 24th July 1783.

"The distressed situation to which many of His Majesty's faithful Subjects in the "Provinces and Colonies now the United States of America are reduced by adhering to "their Loyalty and supporting the British Constitution, has induced His Majesty to "afford them every encouragement due to their zeal and sufferings. and as Numbers of "those deserving Loyalists may wish to settle in Quebec it is His Majesty's pleasure "that every assistance and support should be held out to them."

Fifth—Because the Bill was framed to heal the divisions and animosities which have so long subsisted in the Colony to its disgrace and detriment, and we are fearful that the rejection of it will not only revive a Spirit, which as a party one in the trite game of selfish ambition and avarice, for petty consequence, place and profit, is always contemptible, and sometimes harmless, is nevertherless to the last degree dangerous, in a Country of mixed Nations habits and languages, where the name of party, if the contest respects the substantial interests of the Crown and nation will be changed into the serious discrimination of the Loyal and the disaffected: and we are the more anxious for the general harmony as the discords by increasing the debility of the province, pre-disposes it to become a Theatre for the Malignant Machinations of the internal mal contents of Great Britain and the hostile views of foreign powers.—

Sixth—Because without some regulations to quiet the murmurs against the course of administring Justice which has obtained here for years past, expressed in the Reports on our Table, from the Magistrates and Merchants of the Province, and the complaints to the King's Ministers by the Merchants of London, the commerce and settlement of the Colony cannot advance, in the course necessary to give it strength for its own security, and cover the two other Provinces,[1] fortunately for all of them; committed to the wisdom and vigilance of the noble Lord, who is so well disposed and qualified to raise them to safety and prosperity if their own cheerful co operation shall not be wanting.

Last—Because thro' the whole of the debate for the noncommittment of the Bill, which has had but a single reading it being the course of this Council contrary to Parliamentary usage to commit it before a second reading) nothing was offered in our opinion of the least weight against the Bill, unless there be supposed good cause for the insinuation of the Honourable Judge of the Common pleas, who was alone it, that

[1] Referring to Nova Scotia and New Brunswick, now placed under the general administration of Lord Dorchester. See note 2, p. 550.

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the Preamble was exceptionable on account of its having recited that part of the Quebec Act, excluding the *Religious houses and communities* from the benefit of the Laws and usages given to other Catholics; to which the Speaker added his regret at the bare mentioning in conversation without doors as another matter tending to dissatisfy the Catholick Inhabitants the King's late gift or intended munificence out of the Estates of the dissolved and banished Order of Jesuits to an Individual, meaning The Right Honourable Lord Amherst.[1] Respecting which we are persuaded and think it just to declare, that the ill temper and Spirit implied by the suggestion, as existing in the Colony, has as yet neither that degree of Inveteracy nor extent to require any timid condescensions from the Executive and Legislative authority subversive of the Government; and we conceive that if the fears of the Speaker really had any foundation, the Bill stood for that reason upon the stronger ground, not only for the Committment he opposed, but the enacting it to all the Extent of its objects for gratifying the reasonable expectations of His Majesty's good and Loyal subjects, for the promoting the population of the Country, and the Speediest removal of every cause of discontent upon the interesting points of commerce, and the right Adminis ration of Justice; without which no people can exist in safety and peace, and a Commercial people the least of all others.

We lament therefore the loss of this Bill as embarrassing if not defeating the provisions expedient for the interests of the Crown, as unfriendly to the Commerce of the Nation as distressing to the Loyalists who have fled to our Borders for refuge, and have the most unexceptionable claim, at least to Legislative regulations for their comfort, as tending to distract the minds of the Inhabitants with Jealousies, to the reducing of the force of the Colony; and as the consequence of all, the exposing of it to the operation of foreign principles, smoothing the way to an Invasion.

And this Protest we make in vindication of ourselves to His Majesty and his Representative, and with the sincerest desire to preserve the tranquility of the Province and the Interest of every order of Men in it, Protestants and Catholics, by all the means that may consist with our duty to the Crown, and a warm and affectionate regard for the general weal of the British Empire.

Quebec. Monday. 9. o'Clock A M

26th March 1787.

(signed)

Wm Smith
Hugh Finlay
Edwd Harrison
John. Collins.
Geo. Pownall
Henry. Caldwell
William Grant
Samuel Holland
John. Johnson[2]

[1] In 1770 Lord Amherst had petitioned for and been promised the Estates of the Jesuits. See Q 56-3, p. 846. But during the year 1787 quite an agitation arose to have these estates devoted to education. See various petitions and papers in Q 35, pp. 62-116. See also the very full reports on the Jesuit Estates contained in vols. Q 50-A, 50-B, 50-C, 50-E, 50-F, 50-G, 1 & 2 and 50-H.

[2] When the Ordinance of 27 Geo. III., cap. 4, which follows this document, had passed, Messrs Harrison and Holland "prayed leave to strike out their names from this Dissent; the ends for which they signed the same being obtained in the Ordinances which have been passed this session by the Council. And it was ordered accordingly." Q 27-2, p. 654.

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ORDINANCE *RE* PROCEEDINGS OF CIVIL COURTS[1]

ANNO VICESIMO SEPTIMO GEORGII TERTII REGIS.

Chap. IV.

An Ordinance to continue in Force for a limited Time an Ordinance made in the 25th Year of His Majesty's Reign, intituled, "An Ordinance "to regulate the Proceedings in the Courts of Civil Judicature, and to "establish Trials by Juries in Actions of a Commercial Nature, and "Personal Wrongs, to be compensated in Damages,"[2] with such additional Regulations as are expedient and necessary.

The former Ordinance to be continued for Two Years.

Be it Enacted and Ordained by His Excellency the Governor, and the Legislative Council, and by the Authority of the same, it is hereby Enacted and Ordained, That an Ordinance made and passed the Twenty fifth of April, in the Twenty fifth year of His Majesty's Reign, intituled, "An Ordinance "to regulate the Proceedings in the Courts of Civil Judicature, and to es- "tablish Trials by Juries in Actions of a Commercial Nature, and Personal "Wrongs, to be compensated in Damages," and every Clause and Article therein contained, be continued, and the same is hereby continued from the expiration thereof to the end of the Sessions of the Legislative Council which will be held in the Year of our Lord 1789.

In Cases where there is no Jury, the Fact to be inserted in the Record.

And whereas Additional Regulations are at this Time found to be expedient and useful; Be it further Enacted by the same Authority, That in every Instance where the Fact is not verified by a Verdict of the Jury, but by other Proof, or the Testimony of Witnesses, the same shall be inserted in the Record of the Cause, that in case of Appeal the whole Proceedings may go up to be adjudged in the Superior Tribunal, as regularly and as fully as the same was before the Court of Common Pleas.

If the Judgment be upon any Law, Custom, or Usage of the Province, the same to be stated upon the Record of the Common Pleas.

Exception to be allowed.

If the Judgment be upon any Law, Usage or Custom of the Province, the same to be stated upon the Record of the Common Pleas. Exception to be allowed.

And wherever the Opinion or Judgment of the said Court of Common Pleas is pronounced upon any Law, Usage, or Custom of the Province, the same shall in like manner be stated upon the Minutes or Record of the Court, and referred to, and ascertained, that the real ground of the Opinion or Judgement may also appear to the Court of Appeals, and upon all Opinions conceived by any Party to be to his Injury, he shall be allowed his Exception, to be preserved in the Minutes; all which Proceedings shall be transmitted under the Signature of the Judges, or any Two of them, and the Seal of the Court, that all His Majesty's Subjects, and especially His Canadian Subjects, by these means may be protected in the Enjoyment of all the Benefits secured to them for their Property and Civil Rights, by the Statute passed in the 14th year of His Majesty's Reign intituled, "An Act "for making more effectual Provision for the Government of the Province "of Quebec, in North America," and by the Ordinances above-mentioned.

The Same in the Court of Appeals.

And be it further Enacted by the Authority aforesaid, That in all Cases adjudged in the Provincial Court of Appeals, where the same may be appealed to His Majesty in His Privy Council, and where their Opinion or Judgment is pronounced on any Law, Custom or Usage of the Province,

[1] Canadian Archives, Q 62A-2, p. 634. The rival bills of the Chief Justice, representing the English element, and of St. Ours representing the French interest, were defeated, with the result that the Council fell back by compromise upon the renewal of the Ordinance of 1785. However, in the amendments introduced into this, while passing through Committee, there were embodied many of the most important features of the measure introduced by the Chief Justice. The interesting progress of the bill through the Committee, with the numerous amendments proposed and defeated, may be followed in the Journals of the Council. See Q 27-2, pp. 737-761.

[2] See p. 529.

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the same shall in like manner, and for the same Reason as hereinbefore mentioned, be stated upon the Record, or referred to and ascertained.

Four Terms in the Year Established.

And, in all Causes of which the Common Pleas have Cognizance above Ten Pounds Sterling, the same shall be proceeded in, heard, and determined only in regular Terms, consisting of the First Fifteen Days (Sundays and Holidays excepted) in the Months of January and July, and the last Fifteen Days of March and September, Yearly, the First Return Days whereof shall always be the First Day of the Term, and the rest of the Return Days, and the General Rules of Practice, such as the respective Judges of the Common Pleas shall fix in a Formulary.

Appellate Jurisdiction of Court of Appeals,

touching Security.

And, to take away all Doubts and Scruples with respect to the Right of Appeal in any Cause before the said Courts of Common Pleas. Be it Enacted and Declared by the same Authority, That the Court of Appeals shall be deemed and adjudged to have an Appellate Jurisdiction, with all the Power necessarily annexed to such Jurisdiction; and that it shall henceforth belong to the Provincial Court of Appeals to determine the Question when security shall be requisite, and the sufficiency thereof, and the Admission, Dismission, or Remission of Appeals, and the supply of the Defects of the Record and of the Effect of the Appeal as a Supersedeas of all or any Proceedings in the Lower Courts for the stay of Execution on the Judgment of the same, or any Process of the nature of Execution, with Authority also to make Rules and Orders, to regulate, effectuate and accelerate the Proceedings in all causes of Appeal, for the Advancement of Justice, and to prevent unnecessary Delays and Expence in the same.

Where Executors &c appeal, the Plaintiffs to give Security to refund before Execution issues.

And, where Appeals are brought by Executors, Administrators, Curators, Tutors or Guardians, the Plaintiff shall not have Execution, nor any Process in the nature of Execution, without such security first given as the Court of Common Pleas in their Discretion shall direct, to refund the Damages and Costs, in case the Judgment shall be reversed, together with such Costs as the Court of Appeals may award.

Respecting Dispensation of Justice in Small Causes.

And, for the more convenient Dispensation of Justice in small Causes, It is enacted and Ordained by the same Authority, that it shall and may be lawful for his Excellency the Governor, or the Commander in Chief of the Province for the Time being, by and with the advice and consent of His Majesty's Council, to appoint by Commission such and so many Persons as he shall Judge fit, and for such Parts of the Province as he shall think proper, to hear summarily, and to determine finally, without Appeals, all Matters of Debt of Ten Pounds or under; and it shall likewise be lawful for His Excellency the Governor, or the Commander in Chief for the Time being, by and with the Advice and Consent of His Majesty's Council, to regulate the Fees to be taken by the Persons so commissioned, and by their Subordinate Officers, and to direct a mode of proceeding for them, whereof, and the extent of their Jurisdiction respectively, a Notification shall be published in the Quebec Gazette, for the Information of all Persons whom it may concern.[1]

New Districts may be formed by Patent for the remote parts of the Province.

Whereas there are many Thousands of Loyalists and others settled in the Upper Countries above Montreal, and in the Bays of Gaspy and Chaleur, below Quebec, whose ease and convenience may require that additional Districts should be erected as soon as Circumstances will permit;—It is Enacted and Ordained by the Authority aforesaid, That it may be lawful for the Governor or Commander in Chief for the Time being, with the Advice and Consent of the Council, to form, by Patent, under the Seal of the Province, one or more new Districts, as his Discretion shall direct, and

[1] This clause embodies the essential features of the bill mentioned in §2 of the draught ordinance of the Chief Justice; see p. 576.

GSL

to give Commission to such Officer or Officers therein as may be necessary or conducive to the ease and convenience of His Majesty's Subjects residing in the remote Parts of the Province.[1]

Attachments in certain Cases only.

And be it further Enacted by the Authority aforesaid, That no Process of Attachment, except in the case of the Dernier Equippeur, according to the usage of the Country, shall hereafter be issued for Attaching the Estate, Debts and Effects of what Nature soever, of any Person or Persons whomsoever, whether in the Hands of the Owner, the Debtor, or a Third Person prior to Trial and Judgment, except where there be due Proof on Oath (to be indorsed on the Writ of Attachment) to the Satisfaction of one of the Judges of the Court issuing the same, that the Defendant, or Proprietor of the said Debts and Effects, is indebted to the Plaintiff in a Sum exceeding Ten Pounds, and is about to secrete the same, or doth abscond, or doth Suddenly intend to depart from the Province, with an Intent to Defraud his Creditor or Creditors, and that the Defendant is then indebted to the Plaintiff, and he doth verily believe that he shall lose his Debt, or sustain Damage, without the Benefit of such Attachment.

Proviso.

Provided always, That nothing herein contained shall be construed to the Prejudice of the Rights of Landlords, in their legal Course, for the Recovery of Rents, according to any former Mode of Proceeding by any Law, usage, or Custom whatsoever; and provided also, that whenever the Defendant or Debtor shall either pay the Debt and Costs, or give Security to the Sheriff or Officers for the goods so attached, as in Cases of Bail on Personal Arrests, subject to Justification in Court to answer the Value of the Goods, and abide the Judgment of the Court, the same shall be forthwith restored; and for that Purpose the Defendant or Debtor shall be allowed Forty Eight Hours, after which Period, if the Debt and Costs be not paid, nor Security given, the Goods so seized shall remain attached, and held by the Sheriff or Officer to answer the Judgment of Law.

These Additional Regulations to be in Force for Two Years.

Be it further Enacted by the Authority aforesaid, That the additional Regulations hereby Enacted shall be in force until the end of the Sessions that shall be held in the Year of our Lord 1789, or as long as the Ordinance hereby renewed; and that the Ordinance passed in the Twenty-fifth year of the Reign of his present Majesty, intituled, "An Ordinance "for granting a limited Civil Power and Jurisdiction to His Majesty's "Justices of the Peace in the Remote Parts of the Province"[2] be no longer in force than until Such Small Jurisdictions as by this Act are authorized shall be actually erected.

Enacted and Ordained by the Authority aforesaid, and passed in Council under the Public Seal of the Province, at the Council Chamber, in the Castle of S^t Lewis, in the City of Quebec, the 30^th of April, in the 27^th Year of the Reign of our Sovereign Lord George the Third, &^c &^c &^c and in the Year of our Lord 1787.

By His Excellency's Command,

(signed) J. W. MEARNS

C.L.C.

[1] This clause embodies the chief features of §1 of the draught ordinance of the Chief Justice; see p. 575.

[2] This was the Ordinance of 25 Geo. III., cap. 5.

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ORDINANCE *RE* CRIMINAL COURTS.[1]

ANNO VICESIMO GEORGII TERTII REGIS.

CHAP. VI.

An Ordinance to Explain and Amend an Ordinance for establishing Courts of Criminal Jurisdiction in the Province of Quebec.

Peace Officers appointed in the Country Parishes.

Whereas it is expedient that public Officers should be established in the several Parishes of this Province, under the Denomination of Peace Officers; It is Enacted and Ordained, by his Excellency the Governor and the Legislative Council, That all and every the Captains, and other Officers of Militia in the said several Parishes of this Province, duly commissioned by His Excellency the Governor, or the Commander in Chief for the Time being, and likewise the Serjeants named and appointed by the said Captains and other Officers in the respective Parishes, be, and they are hereby declared to be Public and Peace Officers within their respective Parishes, and authorized and enjoined to do and exercise all and singular the Duties and Services of Public and Peace Officers within their respective Parishes according to Law

The same to be appointed for the Towns.

And be it further Enacted by the same Authority, That it shall be Lawful for the Commissioners, or Justices of the Peace, assembled in Quarter Sessions, or by a Majority of the same, and they are hereby required, as soon as conveniently may be, to name and appoint such and so many Persons as they may think sufficient, within the Towns and Banlieus of Quebec and Montreal, for carrying into Execution the orders and Decrees of the several Courts, and to preserve the Public Peace therein, every of which Persons so appointed shall faithfully perform the Duties of the Offices for which he may be so appointed for the space of one year; previous to the expiration whereof it shall be the Duty of the said Commissioners or Justices of the Peace annually to appoint others to serve in their stead, and to increase or diminish the number first appointed, as to them shall appear to be most for the Public Weal and Safety; and that no such appointment shall be valid in Quebec or Montreal, and their Banlieus respectively, in the Case of a Civil or Military Officer, or in any Person in Priest's Orders, or in the Profession or Practice of Physic or Surgery, or any Miller, Ferryman, Schoolmaster, or Student of any College or Seminary, or any Person not of full Age: or for neglecting or refusing to perform the said Office or Offices there shall be the Forfeiture of Twenty Pounds, to be recovered in any Court of Record, with Costs of Suit, by Bill, Plaint, or Information, in which no Essoign, Wager, of Law, or any more than One Imparlance, shall be allowed.

(signed)

DORCHESTER

Enacted and Ordained by the Authority aforesaid and passed in Council under the Public Seal of the Province, at the Council Chamber, in the Castle of S[t] Louis in the City of Quebec, the 30[th] day of April, in the Twenty seventh year of the Reign of our Sovereign Lord George the Third, by the Grace of God of

[1] Canadian Archives, Q 62A-2, p. 644. This Ordinance is an amendment of 17 Geo. III, cap. 5, given at p. 471.

Great Britain, France and Ireland, King, Defender of the Faith and so forth, and in the Year of our Lord 1787.

By His Excellency's Command

(signed) J: WILLIAMS
C.L.C.

SYDNEY TO DORCHESTER.[1]

Private. WHITEHALL 20th Septr 1787.

Right Honble
Lord Dorchester.

MY DEAR LORD,

I think it necessary to accompany my Public Dispatch with a few Lines of a more private and confidential kind.

The Subjects contained in your various Dispatches are of very important and interesting natures. The Merchants who trade to Quebec naturally take part with their British Correspondents. But in the few Conversations I have had with them, they have restricted their Complaints almost entirely to the want of Goals and Officers to secure their Debtors, hinting, however, that they would wish to have the English Commercial Laws prevail instead of the *Coûtume de Paris.* I am clear that the Canadians have a right to retain, if they choose it, the Laws guaranteed to them by the Capitulation, and that Merchants who trade with them ought to content themselves with the Laws of that Country, as well as with those of every other with which they deal.

The Disputes in the Legislative Council are extremely disgusting, not to say disgraceful, to the Government.

Protests are of ancient Use in the House of Lords, but I do not see with what propriety they are introduced into the Legislative Council of Quebec. The Protest of Mr. Pownall against the excluding Strangers,[2] seems to me a very extraordinary Proceeding, and that in which the Speech of the Chief Justice of the Common Pleas is censured, is a direct attack upon the freedom of Debate, and in that instance unprecedented, I believe, by any proceeding of any Assembly whatever.

Some means must be found of preventing this kind of animosity and personality between the King's Servants in the Province, as it is impossible for any Government to subsist under such Circumstances.

The Behaviour of the Attorney General towards the Judges of the Common Pleas, seems to have been extremely improper, even if they deserved the imputations which he so unsparingly cast upon them, but if in the Event he cannot make good his charge, he must certainly appear very unfit to continue in his Office.[3]

[1] Canadian Archives, Q 28, p. 44. In another despatch, dated Sept. 14th, Lord Sydney discussed in an official form the points here touched upon in a more confidential manner. Dorchester is informed that, though it is not the intention at present to change the constitution of the Province, yet His Majesty will be advised to make a change in the tenure of land in the Province. See Q 28, p. 28.

[2] At a session of the Legislative Council Jan. 22nd, some sixteen citizens presented a petition requesting permission to attend the debates of the Council, when Col. Caldwell moved "that every Member of the Council shall have leave to introduce any Gentlemen to hear the Debates at any time, except when the House is ordered to be cleared." This motion, however, was defeated by ten to eight, all the French members voting against it. On Jan. 25th, Mr. Pownall recorded his protest, his reasons being that every British subject had a right, upon due application, to hear the debates of the Legislature which passed the laws governing him. He pointed out also that the idea which had prevailed previously, (See note 1, p. 529) that the members were bound by their oath to debate all measures in secret, was no longer held, and also that it is necessary to dissipate the suspicion with which their secret proceedings were regarded by the general public. See Q 27–2, pp. 564 & 570.

[3] This refers to the famous arraignment by the Attorney General, James Monk, of the administration of justice in the Canadian Courts of Common Pleas. This criticism was made in the course of an address before the Legislative Council, on April 14th, 1787, when Mr. Monk was acting as counsel for the Canadian merchants, in support of their petition on behalf of themselves and other merchants in Britain, against a proposed ordinance introduced by Mr. St. Ours, to regulate proceedings in the courts, after that of the Chief Justice had been voted down. Mr. Monk's statements were taken up in the Council and the proceedings eventually resulted in a very extensive investigation before the Chief Justice, the minutes of which fill 13 volumes in the Canadian Archives; Q 29-1 to Q 34-2.

All the Disputes seem to tend to a Division of the Province into two, with a Lieutenant Gov^{r} to each, under the Governor, I wish your Lordship had given me your thoughts upon that Subject, as well as upon any other plan of adjusting the differences subsisting in the Province, and unfortunately among the Officers of the Crown: You must be better able to form a decisive opinion upon the spot than We can here, and your long experience and general knowledge of the Province would give the greatest weight to your opinion.

The Rights and the opinions of the antient Inhabitants of Canada, must be attended to in every thing like a change of the Government, otherwise under the shew of giving a free Constitution, We are really practicing Tyranny.

Your Lordship will see by my official Dispatch,[1] that the King's Servants have no immediate Thoughts of proposing any alterations in the Quebec Act. No Plan of an Assembly has been suggested by any one, and indeed it would, under the present Circumstances, be very difficult to form such a one as would not be liable to very great objection. But I foresee, as well as your Lordship, that in proportion as the number of British and Loyalists increases in the Province, the applications for one will grow more frequent and pressing.

I am, my dear Lord with great truth and regard,
Your Lordship's most obed^{t} humble Serv

SYDNEY.

DORCHESTER TO SYDNEY.[2]

Quebec 13 June 1787.

My Lord,

I transmit herewith The Minutes of Council upon State business from
A the 24th October 1786 to the 2 June 1787. both inclusive.

B The Report of a Committee of Council relating to the Courts of Justice.

C. The Report of a Committee of Council relating to Commerce and Police.

D. The Report of a Committee of Council upon Population, Agriculture, and the Settlement of the Crown lands.

E The Journals serving for a Report of the Committee of Council for the Militia and the high roads and Communications.

F. The Journals of the Legislative Council.

G A set of printed Copies of twelve Ordinances passed during the last Cession of the Legislative Council

H. Copy of a letter from the Lieutenant Governor, dated 10th March 1787.

I. Copy of a letter from the Lieutenant Governor, dated 1st May 1787.

K. Copies of Papers concerning a Grand Jury of Montreal.

The great bulk of the Minutes of the Legislative Council was occasioned by a considerable warmth and much altercation, which prevailed among the members from their meeting; very nearly to the end of the session, when they became more composed, and separated in tolerable good humour, with each other at least in appearance

Two parties have subsisted in this province ever since the Civil Law was introduced here in 'Sixty four, the one zealous for English Laws and

[1] Referred to in note 1, p. 586.

[2] Canadian Archives, Q 27-1, p. 112. The capital letters in the margin refer to the reports and proceedings embodying the investigation of the existing condition of the Province which Dorchester was required to make on returning to Canada. See note 2, p. 520. Those portions of the reports, &c., bearing on the constitutional changes which were being advocated, are given among the documents which follow, and need not be specially referred to here. They will all be found in vols. Q 27-1 and 27-2.

for an Assembly, the other not less anxious to maintain the present form of Government with the Ancient laws customs and usages of the Country.

It unfortunately happened that the Quebec bill, which gave entire satisfaction to the latter, took place at a time, when the Province was too much disturbed by the late rebellion to think of anything further than self defence, and immediate preservation; and it was no small addition to this misfortune, that the province has been left so many years without a law Officer of the Crown, to Assist in regulating the Courts of Justice, and in introducing such laws and practice, as might have given satisfaction to the former without infringing on the rights of the latter; for which reason the Ordinance for regulating the proceedings in the Courts of Civil Judicature has been temporary, and re-inacted from time to time with Alterations. The last Enacted in Eighty five[1] for two Years, of course was to be renewed this session, and on this occasion both parties were attentive and anxious to obtain as much of their favourite System as possible; a bill brought in by the Chief Justice[2] for this purpose was rejected, as were most of the bills brought in by him, the Majority alledging they were calculated to introduce too much novelty into the province; a bill on more Canadian principles was
F brought in[3]; these proceedings occasioned a protest of some sharpness from
26th March. the minority;[4] the Merchants petitioned the Legislative Council to be heard against that bill, then under Consideration of a Committee of the whole council, which was agreed to;[5] the Attorney General, who was employed on that occasion, in his Speech against the bill, accused the Court of Appeals of inconsistency in their decisions, and still more strongly the Judges of the Common Pleas, adding that these were influenced by caprice and humour, and that some of them had granted by favor to one what they had refused
F to another.[6]

26. February The Dissent of the 26th February and the Protest already mentioned
H. I. occasioned the two letters from the Lieutenant Governor,[7] and Mr. Monk's
F speech occasioned the Address from the Legislative Council,[8] and the peti-
27. April tion from the Judges of the Common Pleas then present in Quebec for an
A
page (3 inquiry into these charges.[9]

The Chief Justice has accordingly been directed to investigate this matter, as it was not thought adviseable to add any part of the Council, since they were in some Measure involved in the Accusation.

The bill under deliberation[10] was rejected, and the temporary bill ready to expire was re-enacted for two years with many additions,[11] which for the present has satisfied most of the opposite party both within the Council and without, so that there seemed a general disposition to rescind the protest, which had given much offence, and was carried into execution by two

[1] Given at p. 529.

[2] Given at p. 574.

[3] This bill was introduced by Mr. St. Ours, on Feb. 22nd, 1787. See Q 27-2, p. 611.

[4] This protest, given at p. 579, was entered on the journals of the Council of March 26th. See Q 27-2, p. 646.

[5] See journals of the Council, April 7th and 10th, Q 27-2, pp. 694 and 696.

[6] The Attorney General delivered his address on April 14th. See note 3, p. 586.

[7] On Jan. 23rd the Chief Justice, seconded by Mr. Finlay, brought in a bill "to secure the Royal Revenues and to regulate the Proceedings in Crown Causes, and to give the Subject the benefit of Appeal from large fines." This was intended to provide, through the Court of King's Bench, for the functions of an Exchequer Court, in a less expensive form. When this bill came up in committee, the French section of the Council, with whom Messrs. Mabane, Fraser, and Hope invariably acted on all party questions, so completely altered it, including the title, that Messrs. Finlay, Grant, Collins, Caldwell, Holland, and Sir John Johnson entered upon the journals their reasons of dissent. See Q 27-2, pp. 617-620. This brought out a long letter from Lt.-Gov. Hope to Lord Dorchester, for the purpose of justifying his attitude towards the bill. This is given in section H. See Q 27-2, p. 917. The second letter from the Lt.-Gov. was in justification of his action in assisting to defeat the bill of the Chief Justice, for regulating the proceedings in the Civil Courts, and is given in section I. See Q 27-2, p. 931.

[8] Given in journals of the Council, Q 27-2, p. 768.

[9] See minutes of Council which follow this document, p. 593.

[10] The bill introduced by St. Ours. See note 3 above.

[11] See p. 582.

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of the Members,[1] but failed after a consultation for that purpose, with the rest.

Your Lordship will perceive by the minutes of Council that soon after my arrival the members were divided into Committees[2] for the purpose of making themselves intimately acquainted with the Affairs and interests of the province, and for bringing this knowledge forward and into the Legislative Council. Their reports have accordingly brought forward a great deal of useful information, to which I may have occasion to refer in some of my letters hereafter; but some of the Merchants of Quebec, who were consulted on the business of commerce and police took occasion from thence to enter deeply into law and politicks,[3] recommended that a large portion of the common and statute law of England should be adopted in this Province, and referred to the petition sent two years ago to the King and both Houses of Parliament for an Assembly.[4]

The Canadians were very much alarmed and offended that these Gentlemen should take upon themselves to desire that numberless unknown customs and laws should be introduced, and their old customs and laws abrogated in that summary manner. All the respectable Canadians of the town and neighbourhood presented a Petition[5] expressing their apprehensions upon this occasion. This business was carried on pretty nearly in the same manner at Montreal, and was followed by a petition much to the same purpose;[6] but it did not end quite so soon at Montreal; reports were put about, that unfair means had been used to procure signatures to this petition, and the grand jury sent for several, by a *huissier*, and examined them concerning their signing the petition; the numbers brought in this manner before the grand jury gave the more offence, as it so happened, that the foreman and some of the jurymen were the persons, Against whose opinions and recommendations the petition had been made, and as it did not appear that the smallest irregularity had been found out, some murmurings followed and increased with the numbers examined; at length a Mr. Franchese speaking very freely and censuring the proceedings of the grand jury was prosecuted for this conduct by the Attorney General, and condemned to pay a fine of fifteen pounds.[7] Much interest has been used to have this fine remitted, but as I am convinced many evils might arise from remitting punishments, unless recommended by the Magistrate, who pronounced sentence, I have agreeable to that maxim told them the Application for pardon must come through the Chief Justice.

F 1 Feby.

F 12. Feby.

K.

I have been the more full on these Matters, as they will shew Your Lordship the opinions of both parties here on the laws and form of government.

I am with much respect and esteem
Your Lordship's most obedient, and
Most humble Servant.
DORCHESTER

Right Honble
Lord Sydney
&c. &c. &c.

[1] Referring to the action of Messrs. Holland and Harrison in withdrawing their names from the protest of dissent. See note 2, p. 581.

[2] See below p. 591.

[3] In so far as these deal with matters affecting the constitution of the Province, they are given among the documents which follow, under section C. See p. 612.

[4] See p. 505.

[5] This petition was presented on Feb. 1st. See journals of the Council, Q 27-2, p. 575. The petition itself is given in Q 27-1, p. 315.

[6] This petition was presented on Feb. 12th. See journals of the Council Q 27-2, p. 589. The petition itself is given in Q 27-1, p. 410.

[7] The papers relating to this affair are given in section K in Q 27-2, p. 941.

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QUEBEC.—COPY OF THE MINUTES OF COUNCIL UPON STATE BUSINESS FROM THE 24th OF OCTOBER 1786 TO THE 2nd OF JUNE 1787.[1]

Thursday 2nd November 1786.

At the Council Chamber in the Bishop's Palace.

Present

His Excellency.
The Right Honourable Guy Lord Dorchester
The Honble Henry Hope Esquire, Lieutenant Governor.
William Smith Esquire C.J.

Edward Harrison	John Collins
Adam Mabane	George Pownall
J. G. C. De Lery	Picoltée de Bellestre
John Fraser	Henry Caldwell
William Grant	Paul Roc St. Ours.
Francis Baby	Joseph De Longueüil
Samuel Holland.	. . . Esquires.

His Honor the Lieutenant Governor, William Smith Esquire the Chief Justice, and Edward Harrison, John Collins, Adam Mabane, George Pownall, John Fraser, Henry Caldwell, William Grant and Samuel Holland Esquires, took and subscribed the State Oaths, and made and subscribed the Declaration against Transubstantiation.

And Joseph Gaspard Chauscgros De Lery, Paul Rock St. Ours, Francis Baby, and Joseph De Longueüil Esquires took and subscribed the Oath, required by the Act of the fourteenth of His present Majesty. ch. 83.[2]—Then the Oath of Privy Counsellor was administered to them respectively, and they took their Seats.

The Oath directed by the Statute of the 18th of Edward the 3d Stat 4. was administered to the Honble William Smith Esquire as Chief Justice for this Province.

His Excellency intimated to The Council that he would have certain subjects to commit to their consideration at their next sitting.

Monday 6th November 1786.

At the Council Chamber in the Bishop's Palace

Present

His Excellency the Right Honourable Guy Lord Dorchester
The Honble Henry Hope Esquire, Lieut Governor.
William Smith. Chief Justice

Hugh Finlay	Edward Harrison
John. Collins	Adam Mabane.
George Pownall	J. G. C. De Lery.
Picolteé de Bellestre.	John Fraser.
Henry Caldwell	William Grant
Paul Roc St. Ours	Francis Baby.
Joseph De Longueüil	Samuel Holland.

Esquires.

[1] Canadian Archives, Q 27-1, p. 120. These minutes constitute section A referred to in the foregoing despatch of Dorchester to Sydney. These are minutes of the executive sessions of the Council and differ from the record of the proceedings of the Council as a legislative body, which is given in the journals of the Council which constitute section F. Only those portions of the minutes are here reproduced which have a more or less direct bearing upon constitutional questions. The greater part of the minutes is taken up with commercial matters, government expenditure, petitions for land, &c.

[2] Being the special oath prescribed in the Quebec Act. See p. 403.

GSL

The State Oaths were taken and subscribed by the Honb[le] Hugh Finlay Esquire and Sir John Johnson, Baronet, and they made and subscribed the Declaration against Transubstantiation.

The Oath required to be taken by persons professing the Religion of the Church of Rome, by the Statute of the 14[th] of his present Majesty ch. 83 was taken and subscribed by the Honb[le] René Amable Boucherville and Le Conte Dupré Esquires.

They all took the oath of a Privy Councillor and afterwards their respective Seats at the Board.

At the Board in addition to the above Members.

Sir John Johnson. Baronet
René Amable Boucherville }
and } Esquires.
Le Conte Dupré }

His Excellency Lord Dorchester, agreeably to the Intimation he gave at the last sitting of the Council, was now pleased to recommend to the Board the taking into consideration the following Subjects,[1] viz.

1[st] Courts of Justice
2[ndly] The Militia ; the high roads and communications
3[rdly] Population and Agriculture ; and the Settlement of the King's Lands
and
4[thly] The external and internal Commerce ; and the Regulation of the Police.

His Lordship expressed an earnest desire that the Members composing the several Committees, now to be named, would give particular attention to the objects recommended to their Consideration, having an eye to the Antient Laws and Usages of the Province.

Then His Majesty appointed the Committees

1[st]—For Courts of Justice— The Chief Justice. P[r].
Mr. Finlay
Mr. Dunn.
Mr. Mabane.
Mr. Fraser
Mr. St. Ours.

2[nd] For the Militia ; The High Roads and Communications
The Lieutenant Governor. P[r]
Mr. Bellestre
Col. Caldwell
Mr. Baby.
Mr. La Naudiere.
Mr. Dupré,

3[rd] Upon Population & Agriculture ; and the Settlement of the King's Lands.
Mr. De Lery. P[r]
Mr. De Longueüil.
Mr. Holland
Mr. Davison
Sir John Johnson. B[t]
Mr. Boucherville

4[th] For the external and internal Commerce ; and the regulation of the Police
Mr. Levesque. P[r]
Mr. Harrison
Mr. Collins
Mr. Grant
Mr. Pownall

The Committees are empowed to send for and examine Persons Records and Papers ; and they are to bring in their several Reports to His Excellency with as much dispatch as they shall find convenient.

[1] The investigations to be undertaken were to furnish that information which the Home Government desired to obtain before determining upon the future government of the Province. See note 2 p. 520.

GL

It pleased his Lordship to communicate to the Board that he intended to assemble The Legislative Council on Monday the 15th of January.[1]

Friday 18th May 1787.

Present

His Excellency The Right Honourable Guy Lord Dorchester Governor,
The Honble Henry Hope Esquire Lieutenant Governor.[1]
William Smith Chief Justice

Hugh Finlay	Edward Harrison
John Collins	Adam Mabane
George Pownall	J. G. C. DeLery
William Grant	Paul Roc de St. Ours.
Francis Baby	Samuel Holland
and	
Le Comte Dupré—............................	Esquires

His Excellency was pleased to refer all the public provincial Accounts for the last six months to the examination of the Chief Justice, Mr. Harrison, Mr. Mabane, Mr. Grant and Mr. Baby and any other Member attending shall have a voice; to be reported with all convenient Speed.

Read a Memorial of Mr. Judge Mabane, Mr. Judge Fraser and Mr. Judge Panet, to His Excellency dated the 1st instant, Stating among other things that an Accusation of partiality was made before the Legislative Council, on the 14th of April last, against The Judges of the Court of Common Pleas at Quebec by James Monk Esquire, His Majesty's Attorney General;[2] and "praying His Lordship to do them justice, by vindi-"cating the dignity of Government thus wantonly insulted in their persons by the "King's Attorney General, and thereby rescue their Characters and Reputation from "an attack of partiality, so maliciously and publickly brought against them, and unsup-"ported, which may also upon the slightest inquiry be proved to be altogether without "foundation, and which is altogether unconnected with any further inquiry or investi-"gation His Lordship may think proper to make into the charges of Inconsistency in the "Judicial decisions of the Courts of Justice, alledged to arise from the inadequateness "and uncertainty of the Laws."

Here Mr. Judge Mabane withdrew. Then, read the Address of the Legislative Council to His Lordship, dated the 27th of April "requesting His Lordship, upon the "reasons and grounds therein referred to, to take such steps as in his wisdom he should "judge best calculated to promote the ends of public Justice, and to vindicate the "honour of Government, which are both so essentially interested in an enquiry into the "Charges and Accusations so publickly brought before The Legislative Council, against "the past administration of Justice in the Court of Common Pleas for the two Dis-"tricts, as well as against the Judges of the same; and that of Inconsistency in some "of the Judgments of the Court of Appeals." Read also the Extract from the Journals of the Legislative Council, and the papers *A* and *B*, which accompanied the Address. WHEREUPON it is ORDERED by His Excellency with the advice of the Council that it be Committed to The Chief Justice to cause the Investigation desired to be made, by hearing the parties publickly in the Council Chamber, and that the report be made to His Lordship with all convenient Speed; and first upon the Question of partiality. And the Chief Justice is authorized to employ one or more Clerks in the Service aforesaid, with free Access to Records and Papers.

[1] It was provided by the Quebec Act, and enforced in the ninth article of the Governor's Instructions, that, except under very special circumstances, the Council should meet for legislative purposes, only during the first four months of the year.

[2] See note 3, p. 586.

GSL

MEMORIAL OF THE JUDGES.[1]

To His Excellency The Right Honorable Guy Lord Dorchester Captain General and Governor in chief of the Colonies of Quebec Nova Scotia & New Brunswick— &c &c. &c.

The Memorial of the undersigned Judges of His Majesty's Courts of Common Pleas for the District of Quebec and Montreal.

Sheweth.

That on the 14th of April last, James Monk Esquire His Majesty's Attorney General for this province, on being heard as Council at the bar of the Honble The Legislative Council upon a Petition of some of the Citizens of Quebec, and others, relative to an Ordinance for regulating the proceedings of the Courts of Justice, then before a Committee of the whole Council, did, in a Speech of considerable length, deliver'd in presence of a Crowded audience, enter into a general field of declamation against the Laws and Administration of justice for this Province, charging not only the Courts of Common Pleas for both Districts, but the Provincial Court of Appeals, and even the Lords of His Majesty's Council with inconsistency in their judicial decisions; and also charging the Judges of the Court of Common Pleas for the District of Quebec with partiality in having, through grace and favor granted to John Fraser of London Merchant, what they afterwards denied to William Goodall of the House of Watson and Rashleigh in a Case, of a similar nature; which last imputation is of the most serious nature and consequence to your MEMORIALISTS affected thereby, and to GOVERNMENT.

That when the Attorney General was call'd upon to avow and support what he had advanced in this behalf, and specially required so to do by the Legislative Council, as well as generally, by an Honorable Member Mr. Caldwell, to bring forward any accusation whatever of partiality, other than that stated in the Questions put to him by the Council; he the said Attorney General Did, in place of answering directly to so plain a question, evade the same under pretext of consulting his Clients, as may appear by his answer of record, and having taken time, full six days to prepare himself to satisfy the Council in this respect, in place of coming forward to support so foul an Accusation, Did, at the moment of the last adjournment of the Council to wait on Your Lordship at the close of the Session, present an answer for himself and his Clients equally evasive, for all which your MEMORIALISTS beg leave to refer your Lordship to the Journals of Council and to the last Answer abovementioned.[2]

Your MEMORIALISTS therefore humbly pray Your Lordship to do them Justice, by vindicating the dignity of Government. thus wantonly insulted in their persons by the King's Attorney General, and thereby rescue their Characters and reputation from an attack of partiality so maliciously and publickly brought against them and unsupported, which may also, upon the slightest inquiry be proved to be altogether without foundation,—and which is altogether unconnected with any farther inquiry or investigation Your Lordship may think proper to make into the Charges of inconsistency in the Judicial decisions of the Courts of Justice Alledged to arise from the inadequateness and uncertainty of the Laws.[3]

Quebec 1st May 1787.

(signed) A. MABANE. J.C.P. for Quebec
J. FRASER. J.C.P.
Pre PANET. J.C.P.

[1] See Q 27-1, p. 135.

[2] For Monk's statement, see journals of the Council; Q 27-2, p. 776.

[3] As stated in Dorchester's letter to Sydney, see p. 588, the Chief Justice was appointed to investigate the matter. The record of the investigation fills 13 volumes, Q 29-1 to Q 34-2, and brings out most abundantly the very confused, inconsistent, and arbitrary system of justice administered under the Quebec Act, but without establishing any wilful corruption on the part of the judges, who were simply the victims of the system.

REPORT OF THE COMMITTEE OF THE COUNCIL RELATING TO THE COURTS OF JUSTICE.[1]

TO HIS EXCELLENCY THE RIGHT HONORABLE LORD DORCHESTER, GOVERNOR IN CHIEF OF THE PROVINCE OF QUEBEC &c &c &c

The Report of the Committee of the Council, relating to the Courts of Justice.
May it please your Lordship

The Committee from the indefinite reference of the general subject of the Courts of Justice to their consideration, apprehend that it is Your Lordships wise and benevolent intention to bring the present Jurisprudence of the Colony into view, for the purpose of such Emendations as the Public welfare may require, and to that end they proceed

First, to State what Courts there are for the administration of Justice, and then

Secondly to subjoin the observations occurring to them, as most deserving of Your Lordships Attention.

There are Courts for Criminal, and Courts for Civil Jurisdiction.

Two Ordinances of this Province for instituting these Courts were passed in 1777,[2] and another in 1785[3] for regulating the Civil Judicature, under the Authority of the Statute of 1774 commonly called the Quebec Act.

That Ordinance which relates to the Criminal Jurisdiction[4] erects

1st A Court of Kings Bench for the Cognizance of all Pleas of the Crown; and for the trial of all manner of offences whatsoever; to be held before the Chief Justice (*or Commissioners that may be appointed for Executing the Office of Chief Justice for the time being*) who shall hear and determine the said Pleas of the Crown, and all manner of Offences whatsoever, according to the Laws of England, and the Ordinances of the Governor and Legislative Council of the Province.

IIly Courts of General Quarter Sessions of the Peace in each of the two Districts of Quebec and Montreal, by so many Commissioners of each District, as are or shall be limited in the Commission of the Peace, who are to hear and determine all matters relative to the Conservation of the Peace, and whatsoever is by them cognizable according to the Laws of England, and the Ordinances of the Governor and Legislative Council of the Province.

The two Districts of Quebec and Montreal comprehend the whole Province, and are divided by the River Godfroy falling into the St. Lawrence from the South, and the St. Maurice from the North; so that the Eastern District is Quebec, and the Western Montreal: Each District has a Sheriff and a Coroner, Special Commissions of Oyer and Terminer may issue for either; and the same act provides

Ist That the Captains of the Militia may arrest any person "guilty of any Breach "of the Peace, or any Criminal offence within their respective Parishes, and convey or "cause to be conveyed such person before the nearest Commissioner of the Peace, to be "dealt with according to Law." (1)

(1) That this be a part of the Report For it Mr Finlay
Against it Mr Mabane, Mr St Ours

IIly That the Captains of Militia *may*, when any marks of violence Appear on the dead body Summon together six reputable householders of his Parish to inspect the same; and he shall according to their opinion report the manner and cause of such death in writing to the nearest Commissioner of the Peace that a farther Examination may be made therein if necessary.

[1] Canadian Archives, Q 27-1, p. 185. This is section B referred to in Dorchester to Sydney, see p. 587. This report was made before the investigation due to the charges of Atty. Gen. Monk was undertaken. The committee appointed to report upon the Courts of Justice consisted of the Chief Justice, and Messrs. Finlay, Dunn, Mabane, Fraser, and St. Ours. As will be observed however most of the work was done by Messrs. Finlay, Mabane and St. Ours. The notes 1 to 9 were placed at the foot of the pages, or rather on parallel pages in the original mss., but to avoid confusion they are here given at the end of each section.

[2] See pp. 464 & 471.

[3] See p. 529.

[4] See p. 471.

GSL

No other Law has been passed in the Colony so to organize it, as to give effect and operation to that part of the Statute, by which the Criminal Laws of England were introduced, as the Law of the Province relating to crimes and offences.

Under the two Ordinances respecting the Dispensation of Justice in *Civil* Causes, the Courts are

I[st] A Court for small causes of Ten pounds sterling and under.

II[d] A Court for Causes exceeding that Sum.

III[d] Courts to hear Causes in Appeal.

For Your Lordships clearer discernment of the nature of these Judicatures, the Committee beg leave to present an abstract of what appears to be most material in the Ordinances with respect to *each* of these Judicatures, and

I[st] As to the Court for small Causes—The Cognizance is committed to either of the Judges of the Kings Court of *Common pleas.* His decisions are final, and the rule *Equity and good conscience*, as often as Judgment is given by the default of appearance. In other cases the practice has been to determine by the *Law in general*, as it was understood by the Judge to apply to the case.

The Court is held weekly. The process is a declaration and summons—The Return Day *as the Judge directs*—The proceedings are summary—Costs follow the Judgment—The Execution runs against the moveables unless screen'd by the fraud or violence of the defendant, and then against his person—It is to be executed by such person as the *Judge nominates*, and the Sum may be levied by installments, but all to run out within *three* Months.

Confined to no place, the Judges alternately itinerate with their Clerk, twice yearly to the remoter settlements within the bounds of their respective Districts.

II[ly] And in all causes above Ten Pounds *two* of the *three* Judges for each District are required.

This is the great Court of the Country, with *original* Jurisdiction; it has by the Ordinance

"Full power Jurisdiction & Authority to hear and determine, all matters of Con-"troversy relative to property and Civil rights"—

It sits weekly in each District; it *may find Fact and Law*, but either party has the right in *certain* cases of electing a trial by Jury, and the formulary of practice is of course *two fold.*

The first process is a declaration & summons, returnable at the day a *Judge directs*, it goes to the Sheriff of the District on default of appearance at the two next successive Court days there is an interlocutory Judgment—There is no Jury of Enquiry; the Court assesses the damages, and gives the final Judgment; an execution follows, but in that case the plaintiff gives security to refund, if by the reconsideration of the *same Court*, that Judgment shall be revers'd; as it may be, where the defendant being an Inhabitant of certain remote distances, Viz[t] ("beyond the Long Sault on Ottawa River, "or beyond Oswegatchie[1] in the upper parts of the province, or in or upon any place "below Cape Cat on the South side, and the Seven Islands on the North side of the "River St. Lawrence") *had not been personally summoned.*

Where there is proof of the defendant's intention to leave the Country, the first process may be a *Capias* and require bail.

An issue may be raised *Ore tenus*; the Ordinance has the words on that subject,

"That every issue in Law or Fact, to be formed in any cause, shall be made and "compleated by the Declaration, answer and replication, or by the plea, answer and "replication in Cases of abatement and bar of the said parties, plaintiff and defendant; "and that no other or further pleadings or writings by way of plea, upon such issue or "matter in Dispute, whether of Law or Fact, shall be received or admitted by the said "Courts of Common Pleas, as part of, and to be put upon the record, in any case there "instituted and to be heard and adjudged upon, any thing to the contrary notwithstand-"ing—"

The trial by Jury is at the option of either of the Parties in such suits as are

[1] Ogdensburg, or Prescott on the Canadian side of the St. Lawrence.

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"Grounded on Debts, Promises, Contracts and Arguments of a *Mercantile nature* "*only* between Merchant and Merchant, and Trader and Trader, so reputed and under- "stood, *according to Law*; and also of personal *wrongs* proper to be compensated in "damages"—

The Jurors are to be

"Merchants or Traders of Lawful age, and also all persons of lawful age being house- "holders, or occupying Lodgings of the value of Fifteen pounds per Annum rent."

They are to come only from the Vicinages or Banlieus of Quebec or Montreal; The precise limits of which the Committee are not able to ascertain.

The Sheriffs are annually to file two lists in the Clerks Office; the first to consist of all *Merchants concerned in Trade*, and the second of persons of other occupations. These lists may be *remodelled* by the Sheriff and Judges, and are to be open to public resort.

In causes of Mercantile dispute, or actions of Damage where the total amount, sum, dealing, or matter of account, agreement or transaction between the parties, exceeds Fifty pounds, a Jury is to be struck from the *first* list—and from the *second* when the Demand is of Fifty Pounds and less; and the strikings are to be in rotation, commencing for one cause where the last ended.

Challenges are to be according to the Laws of England; but in Causes between natural born subjects the Jurors are to be natural born, Canadians if the parties are Canadians, and De Medietate, where they are of different Classes.

The English rules of Evidence are to direct "in Proof of all Facts concerning *com-* "*mercial* Matters."

Depositions before a Judge, after notice to the adverse party are admissible in the case of a Witness about to leave the Province, or being sick, or not able to attend, and as the Ordinance adds, in cases of evident necessity.

The Verdict is compleat, tho' but *nine* Jurors concur.

On the Seizure of Personality in Execution, it shall be published at the Church door of the Parish, the next following Sunday, notifying the time of sale.—That sale is to be within the Parish and the time not within Eight days from the Seizure—

At the request of the plaintiff, the goods may be conveyed to and sold at the Capital of the District, and the Personal Estate is to be sold first

The sale of the Realty is to be preceded by three Gazette Advertizements, with an interval of *four* Months, verbal and written proclamations at the Church door of the Parish, and a public call upon all incumbrancers to notify their demands at the *Sheriffs Office*

The body is liable to Execution when the goods are secreted or the Seizure opposed, and to satisfy Judgments to *Merchants* and *traders*—But upon Oath of the imprisoned debtor after a months confinement, swearing himself not worth Ten Pounds, he is to have three shillings and six pence a week for his sustenance from the Creditor; with a further Augmentation to one shilling and six pence more by the *discretion of the Judges*, unless the plaintiff proves a concealment or substraction of effects for the purpose of fraud

And Creditors have the advantage of carrying the process of execution from one District to the other. The

III^d Civil Judicature is the Provincial Court of Appeals,

It is constituted by any five Members of the Council with either the Governor, Lieu^t Governor, or the Chief Justice.

It has no *Original* Jurisdiction but only the hearing and determining Appeals in causes under Ten Pounds, where it relates to a duty to the Crown, a fee of Office or annual rent, or where a future Right is to be bound *and in all cases above Ten Pounds.*

But the Judgment below is final, and the right to Appeal suspended upon the Appellants giving security to prosecute the Appeal and pay the Costs and damages, in case the first Judgment be affirmed.

It admits of a Question, whether the Jurisdiction of the Court of appeal is not made to depend on the giving such security, The security is left to the Judgment of the Court below.

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From the Provincial Court of Appeals, the dernier resort is to the King in Privy Council, but only in such cases under Ten Pounds as might come to the Provincial Court of Appeals, and in those above Five Hundred Pounds Sterling.

The only remaining Court in the Actual execution of Authority is,

The Prerogative Court, one in each of the two Districts.

The Judges are constituted by Commission under the Province Seal, and are the *very same persons*, that now sit on the Bench of the Common pleas.

Their Commissions give them power to take ye Probate of Wills relating to *real* and personal Estates, and Issue letters of Administration, prove Inventories and Accounts, "and to transact whatever may be legal and right for the Just Execution of all "Wills and Codicils, and touching Estates, Lands, Tenements, Goods, Chattels, Rights, "Credits and Effects of all, any and every Intestate; and to divide, apportion, appro-"priate and decree the same, to such persons, and in such manner, as by Law it is per-"mitted, and directed to be done."

The Question implied by Your Lordship's reference requiring, not only an enumeration of the Courts, and an analysis of their powers, but what may appear to be expedient for the advancement of Justice, the Committee proceed next *to that* part of their Report.

They are very sensible of the weight of that care and circumspection, which his Majesty recommends, for the Establishment of the proper mode of administering Civil and Criminal Justice, in a Province so peculiarly circumstanced.

The Committee therefore mean as most likely to answer Your Lordship's intention, *barely* to point at *the most* palpable defects in its present Judicature and beginning with that branch which more immediately concerns the Crown, further provision seems to be wanting

I^st^ To introduce the subordinate and necessary Peace Officers known in the English Law, as Bailiffs and Constables.

There are no Constables in the Province, and the Captains of the Militia are mere Volunteers, from whom no service can be exacted as a Duty (2)

(2) On this clause, for its standing. Mr. Finlay. against it, Mr Mabane and Mr. St. Ours, who offer'd in its place the following suggestion

"Mess^rs^ Mabane and St. Ours think the clause should run thus; There are no peace "Officers in the Parishes of the Province as are known in the English Law, by the "name of Bailiffs, or Constables, the Captains of the Militia being by the ordinance "authorised to act as such without an obligation enjoin'd on them to do the duty."

II^ly^ Suitable Justice-*Halls* and Prisons—The latter both at Quebec and Montreal being in a Condition neither consistent with Humanity to the Prisoners, nor safety to the Sheriffs or the Public, and having been *repeatedly* presented as insufficient by the Grand Juries of both Districts.

III^ly^ As the Law stands there is great danger of a Defect of Public Justice, in the difficulty of obtaining freeholders to serve as grand and petty Jurors on trials in *Criminal* Cases.

With a Freehold Estate, a competent knowledge of the English Language may be necessary; but very few unite both those qualifications, and yet there are many Inhabitants very fit for this Service who have no Freeholds (3)

(3) Advanced to this length in the Report, Mr. Mabane insisted on taking in here, what he offers as his Motion in the words following, and it was agreed that a Minute be made of it.

"Mr. Mabane agreeable to a Motion which he made in Council the 6^th^ of last "November, and which was withdrawn upon assurance given that the object of it would "be taken into consideration by the Committee which was to be appointed for the "Courts of Justice, finding that in the Report proposed by the Chairman no notice "taken of that important necessary business, has made out, tho' very sensible of his "want of sufficient abilities the Heads of an Ordinance for promulgating to the people "of this Province the principal parts or Articles of the English Law which he will "subjoin to the Report as soon as it can be copied, for His Lordship's information.

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IV^ly The case of the Loyalists from the old Colonies, who to the number of several thousands have seated themselves since the last War in different parts of this Province, calls, in the opinion of the Committee, for a very particular attention.

If this Class of the Inhabitants is to be severed from any other District, and erected into separate Counties, an Act of Legislation will be necessary for that purpose, the partition of the Province into two Districts, standing at present upon a Law, that must for that purpose be repealed (4)

(4) On putting the Question as to making this Clause a part of the Report.

For it—Mr. Finlay
Ag^st it—Mr. Mabane, Mr. St. Ours } A substitute to be offered next meeting—

The Substitute Offer'd—

Tho we are sensible that every attention compatible with Law and the good Government of the Province should be given to the Loyalists, we beg leave to observe to Your Lordship that by far the greatest part of the Loyalists who took up arms in Defence of his Majestys Government during the Course of the Rebellion, are already settled in this Colony or those of Nova Scotia, New Brunswick and their dependancies

To this class of men Government is bound by Justice and gratitude to give every protection and assistance. There may be of these meritorious people in this Province (Their wives and children comprehended) about Six thousand; of them a great number are Emigrants from North Britain who served in the 84^th Regiment, the Provincial Corps of Sir John Johnson, and others; who assuredly cannot be supposed to have any predilection for Laws of which they are totally ignorant. Every precaution was taken to make the Loyalists, and others before they were disbanded acquainted with the conditions upon which the Kings Lands were to be granted, and none of them could be ignorant that by fixing their residence in this Province they became subject to the Laws of it.

In framing Laws for the Province consideration shou'd certainly be had to the opinions & customs of 113,000 natives, rather than to those of 6000 Strangers—

The number of Loyalists settled above Montreal does not appear at present to require a separate District to be erected, tho' that measure may become necessary in a few years; but by that time the state of the upper Countries, after the evacuation of the Posts without the limits of the Province being known the Legislative Council will be better able to deliberate upon the Measure, with precision and Certainty—

With regard to the great number of Emigrants from the United States of America, who we are told, may be expected to resort to this Province provided the Laws were made agreeable to them, we think it our duty to observe to Your Lordship, that as these men did not stand forth in Defence of His Majesty's Government they can in general have no Claim to its Justice or Gratitude; They are discontented with the Taxes and other Grievances which abound in the american States, and are therefore willing to seek an asylum in the British Colonies. It may be Policy to admit them; but for many reasons they should be encourag'd to settle in the Colonies where the Laws and form of Government are most agreeable to their Ideas, such as New "Brunswick, Nova Scotia, the Islands of Cape Breton and St Johns: The Climate in "the latter is temperate, and the lands fertile. The insular situation makes it easy "for Great Britain to protect and keep it as a Colony. The Province of Quebec may "be considered in many respects as a frontier to the remaining British Colonies. Its "inhabitants are numerous, and by Religion, Language Laws and Customs are the "class of men the *least likely to coalesce* or unite with the neighbouring states of "America."

"It is most humbly submitted to Your Lordship whether or not sound policy does "not require that they should continue as they are"—

In 1766 when Governor Murray caused a *Recensement* to be made, the Canadian men, women and children amounted to 65000. In 1784 when Governor Haldimand caused another Rescensement to be made, their numbers amounted to 113,000.

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From this state of the population during the period of 18 years, your Lordship may form an idea how much the Canadians will increase in 30 years, and there will not be wanting men to cultivate the Lands which remain to be conceded, or to carry on the Trade of the Colony in all its different branches.

V'y The Committee conceive it to be their duty not to omit the suggestion, that the Province remains to this day, without a Court of Exchequer for the regular *Estreat* of His Majesty's casual Revenue of fines and forfeitures in the other Courts; an object to which it becomes the Legislature to attend not only in *fidelity and gratitude* to the Crown, but *in Justice* to the Colony, the King out of His Royal goodness having applied his whole Revenue, Territorial & Casual to the support of the Government of the Province (5)

(5) On the Question whether this Clause stand?
For it Mr. Finlay
Against it Mr. Mabane.
doubted, by Mr. St. Ours.
Mr. Mabane offers what follows. "There is certainly no court of exchequer in "the Province; but to this day there has been no Inconveniency felt from the want of it. "The Sheriff and Clerks of the Court accounting every Six months to the Receiver "General for the casual Revenue.

"With regard to the Territorial Revenue if it has not been fully revised it has not "arisen from any deficiency of Law or authority in the Courts of Common pleas, but "from the Indulgence of Government"—

VI'y The Committee on the other hand, cannot avoid the Remark, that tho' the present Ordinances enact what the King has been graciously pleased to recommend, Appeals for the security of the property of the subject in *Civil* causes, a Clause is still wanting to authorize what His Majesty has enjoined, that appeals be also allowed, even in prosecutions in His Majesty's *own name* for any fine that shall exceed the Sum of One Hundred Pounds Sterling—

And as it is on the *Crown Side* of the Kings Bench Court that inferior Jurisdictions are kept within the bounds of their Authority, and Magistrates held to their duty by the Writs of QUO WARRANTO and Mandamus. &c., and the liberty of the subject protected, and it should neither be in the Power of that Court, to adjourn nor prolong the Sessions *at pleasure*, it appears to the Committee to be requisite, that its terms and return days be fixed and ascertained.

On the Civil Judicature
the Committee beg leave to observe.

I'y That it is in their opinion much to be regretted, that the Common Pleas, a Court so respectable as that tribunal ought to be, to which causes of the highest Consequence are entrusted, holding the right of deciding in the first instance upon every subject of property, in Actions Real, Personal, & mixed to an indefinite value, should be charged with, and disparaged by a perpetual attention to the petty litigations under the value of Ten Pounds.

The Remedy seems to be a Law, enabling Your Excellency by a Commission to divide the Province into *Precincts or Circles*, consisting of two or three contiguous Parishes; and to consign the cognizance of small causes not to Justices of the Peace (who by such a mistaken Policy, will be drawn aside from their proper duty in support of the Government & the conservation of the public tranquility) but to *two* or *three* Gentlemen of the *Precinct* or *Circle*, proceeding summarily, according to good conscience, in a weekly Court of Requests, nearly similar to those lately established in different Districts and Towns in England; and by dispensing Justice in a quick, cheap and easy manner, to a convenient neighbourhood, releiving the poor, and promoting that Industry which *prevents* vice and disorder, and is of the greatest utility to the common weal.

But if for *want* of *Public Spirit* this measure should not be practicable in the old settled parts of the Province, (*which they are not willing to believe*) the Committee humbly conceive some such Law, must be indispensably necessary for the new Districts, which, as consisting of English Loyalists & being very remote, cannot be left without such Courts for the Adjudication of small causes, as well as what they have also been

accustomed to, an *inferior Court of Common Pleas* for the trial of Actions to Twenty, Thirty, or Forty Pounds, according to the Course of the Common Law. (6)

The draft of an Ordinance for the trial of small causes is before the Committee.[1]

(6) On the Question whether this Clause stand?

For it—Mr. Finlay.

Mr. St. Ours doubts on the Clause.

Mr. Mabane offers the following remarks, to be inserted—

"With regard to the Courts of Common Pleas having been charged with the "determination of small Causes begs leave to observe to Your Lordship that at the "Establishment of Civil Government in 1764 in order to prevent the necessity of the "Inhabitants repairing from the distant parts of the District, there was an Ordinance "passed authorising the Justices of the Peace to take cognizance of debts &c under "the Sum of Ten Pounds.[2] Many abuses arose from this Institution, and in the year "1770 an Ordinance of the Governor & Council was passed[3] taking away the Juris-"diction from the Justices of the Peace, and in order to prevent the Inconveniences "resulting from the Change, required the Judges of the Court of Common Pleas to make "a Circuit twice a year in their different Districts for which they have no allowance of "any kind, and established a Weekly Court in the Towns of Quebec and Montreal "where one of them was obliged to be present & determine Causes under the sum of "Ten Pounds, and in these Causes very frequently points of Law of great Intricacy "are involved; but if any method can be fallen upon to free the Judges of the Common "Pleas from this burden without detriment to the Public, Mr. Mabane as one of them "would be very glad of it; but it is with regret that he does not think the remedy "proposed however well intentioned, and However ingenious applicable to the circum-"stances of the Province."

II^ly If it should be the choice of the Legislature to continue the Course of the Court of Common pleas, in those parts of the Districts that remain, after the new Counties are formed, as it stands at present regulated, by re-enacting the Substance of the Ordinance of 1785, which is nearly expiring, the Committee humbly submit whether (among other amendments) it will not be very necessary so far to alter both Ordinances, as to vest the Provincial Court of Appeals in future, with Authority to adjust the matter of the Security to be given by Appellants for staying Execution of the Judgment in the Court below. (7)

(7) On the Question, whether this Clause stand?

For it—Mr. Finlay

Mr. Mabane observed that, it is his opinion the Court of Appeals have this Authority at present, and Alledges that the Court has exerted it, in more cases than one.

Mr. St Ours is in Doubt on this clause.

III^ly Upon due Consideration of the Copies of His Majesty's Twelfth and Fourteenth Instructions,[4] by your Lordship communicated to the Council (and heretofore by General Haldimand on the 30^th of Aug^ust 1781) the Committee are further of opinion, that no *reasonable* objection will lay against the Trial by Jury in any personal Action, if it be at the same time enacted for the security of His Majesty's Canadian Subjects, that they shall have the benefit and use of their own Laws, Usages and Customs, in all Controversies respecting titles of Land, and the Tenure, Descent, Alienation, Incumbrances, and Settlement of Real Estates, and the distribution of Personal Property of Persons dying Intestate, according to the full intent of the said Statute of the 14^th year of His Majesty's Reign. (8)

(8) On the Question whether this Clause Stand?

For it, Mr. Finlay

Against it Mr. Mabane }
Mr. St. Ours. }

[1] This is the draught of an ordinance summarized in Finlay's note to the Bill of the Chief Justice for the better administration of justice &c. See p. 576.

[2] Referring to the Ordinance of Sept. 17th, 1764. See p. 149.

[3] See p. 280.

[4] See p. 555.

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They offer a note for Entry, and desire that certain memorandums of the Council in 1785,[1] may accompany the Report:—and a List of the Jurors for Quebec.[2]
The Note. "With regard to the Article of the proposed Report relative to the "trial by Jury, Mr. Mabane & Mr. St. Ours cannot agree to it: however as the "Ordinance expires with the approaching sessions, and therefore must be renewed, or "another substituted in its place, they only beg leave to annex for his Lordships information a Copy of Mr. Mabane's dissent from the Register of the Council and an "authenticated list of the Jurors in the town and Banlieu of Quebec, which supports "the objection to the Trial by Jury in civil causes—

IV[ly] As a Court of Chancery is essentially necessary in the English system to perfect the Administration of Justice in *Civil* causes, and the exercise of this Trust, as well as that for those branches of the prerogative Courts which relate to Marriages and the probate of Wills, and the granting letters of Administration, are vested in Your Lordship, the Committee presume *no farther*, than barely to Suggest, that the Subordinate Officers for the *first* of these Courts remain to be appointed.

And that the business of the Common Pleas, well entitles its Judges to an exoneration from the burden of the Prerogative Court,[3] *if the duties of both in the same persons were compatible*; which, to say no more, is very questionable, if it is the right of the Former, to issue prohibitions to the Latter, in cases where its powers are extended *beyond* its Authority; *evinced as it* is, *in the constant practice of the Common Bench* in Westminster Hall (9)

(9) On the Question whether this Clause shall stand?

Mr. Finlay for it
Mr. Mabane }
Mr. St Ours } against it

Mess[rs] Mabane & St. Ours desire the following entry & that the Papers referr'd to in it may accompany the Report—

"With regard to the Court of Chauncery Mr. Mabane and Mr. St. Ours, beg leave "to anex for the information of your Lordship a Paper in the French Language wrote "by Mr Panet one of the Judges of the Court of Common Pleas.[4]

"Mr. Mabane takes the liberty to observe that the Power which the French Law "gives the Judges to interrogate the parties upon Oath, *Sur faits et Articles* pertinent "to the cause in dispute, renders the Court of Chancery in a great measure unnecessary."

"This Power is much regretted by Judge Blackstone not to be inherent in the "Courts of Justice in England, and has been unwarily taken away in Commercial "causes by an Article of the Ordinance which establishes the proof of Facts in Com- "mercial matters to be according to the rules of Evidence in the English Law, tho' the "power still remains with regard to other causes; This instance of itself evinces the "great delicacy and deliberation with which changes should be made in the municipal "Law of any Country, for with the best Intention in the world the Legislators (espe- "cially in a conquer'd Country) may do a great deal of hurt instead of good, but this "may be remedied in restoring the Power when the Ordinance shall be renewed"—

"With regard to that part of the Report which relates to the Prerogative Court, "Mr. Mabane and Mr. St. Ours beg leave to annex a Paper wrote by Mr. Panet for the "information of His Lordship"—[5]

"Mr. Mabane did not consider the Commission from Your Lordship as necessary; "but as by His Majesty's Commission to Your Lordship, the granting Letters of Ad- "ministration is reserved to the Governor of the Province—He acted under it with "great chearfulness as a proof of Your Lordships Confidence in Him, but never con- "ceived that the English words *in it*, can make any alteration in the Law as Estab- "lished by the Statute of the 14[th] of His present Majesty,[6] and adds, that the Judges of

[1] Given below; see p. 602.
[2] Given below; see p. 606.
[3] Various papers and reports with reference to the Jurisdiction of the Prerogative Court will be found in Q 56-3, p. 773.
[4] For Mr. Panet's paper on this subject see below, pp. 607 & 609.
[5] For this paper by Mr. Panet see below, pp. 608 & 611.
[6] The Quebec Act.

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"the Court of Common Pleas, have no Salary nor have ever taken one farthing of fees "from the People, for the Business in the prerogative Court.

Signed by order of the Committee

Wm. Smith. Chairman.

Quebec 11th January 1787.

All which is most humbly submitted, by Your Lordships most obed' and most humble Servants

Quebec
11th Jan' 1787

Hugh Finlay
A. Mabane.
P. R. St. Ours.

THE MEMORANDUM OF COUNCIL REFERRED TO IN NOTE 8.[1]

8th of April 1785.

Read Article 27 of the projected Ordinance which was unanimously rejected

Mr. Mabane propos'd an additional Article to the following purpose. "Provided "always and it is hereby enacted and ordained, That nothing in this Ordinance or any "Article thereof can, or ought to be construed to have introduced any part of the "English Law, which is not expressly mentioned; or to have made any deviation from "the Law and Usage of the Province, which is not clearly and expressly mentioned by "the words, any Law, Usage or custom to the contrary notwithstanding."

9th April 1785.

"Mr. Mabane agreeable to the notice by him given yesterday moved as follows, viz. "Tho' from everything which has appeared in this Sessions I am more than ever convinced that neither the circumstances of the Province nor any urgent necessity requires an innovation from the Municipal law of the Country of so great importance as the admission of the Trial by Jury in Civil causes—Yet as the Council has voted that it should be adopted under restrictions, I think it is the duty of every Member to suggest the mode which appears to him most conducive to the good or the least hurtful in his idea to the interests of the people—I therefore propose that in place of the 10th Article reported by the Committee and rejected by the Council now standing the 9th in the Ordinance, one to the following purpose should be substituted. viz'.

"That it be enacted any Law, Usage or Custom to the contrary notwithstanding, "that in Actions or Suits at Law, in the Courts of Common Pleas, grounded on debts, "promises, Contracts and Agreements of a Mercantile nature between Merchant and "Merchant Trader and Trader, and in all actions and Suits where Compensation is to "be made for personal wrongs—The Tryal by Jury may be had to establish the matter "of fact in the first cause, and to assess the amount of Damages in the other, Provided "nevertherless That it is clearly understood that in Actions or Suits at Law between "persons who are not natives of the province, and in Actions or Suits between persons "who are natives of the Province The tryal by Jury shall be had at the desire of either "of the Parties and that in such Actions and Causes as above where only one of the "parties shall be a native, the tryal by Jury is not to be had except at the desire of "both parties, and in all causes or Suits between persons not natives of the Province "the Jury shall be composed of persons who are not Natives of the Province, and in all "Causes or Suits between Natives The Jury shall be composed of Natives only, and in "all Causes and Suits where one of the Parties may be a Native and the other not a

[1] Canadian Archives, Q 27-1, p. 209. This is the memorandum referred to in note 8 of the foregoing report, (p. 601). It consists of extracts from the journals of the Legislative Council relating to the passing of an Ordinance to regulate the proceedings in the courts of civil judicature, &c. (see p. 529). The journals covering this period are given in Q 26-1, pp. 256-286.

"Native the Jury shall be composed one half of Natives and the other half of persons "not Natives."

Resolved that the Question be put, whether the proposition of Mr. Mabane shall be adopted or not and being put, the voices standing 6 Ayes and 11 Noes voted and Resolved in the Negative.

Copy Articles 9th and 10th referred to as proposed by the Committee and rejected by the Council.

Art 9th.—And be it ordained and enacted That in all Causes, Suits, and Actions to be prosecuted in any of His Majesty's Courts of Common pleas, or removed in Appeal therefrom, which shall be grounded upon Debts, promises, Contracts and Agreements of a Mercantile Nature, the same shall be heard, considered and adjudged According to the Ordinance of this Province in that respect particularly provided, and the Commercial and Common Law of England save and except as hereinafter provided—

Art. 10th.—That all and every person having Suits at Law and Actions in any of the said Courts of Common pleas grounded on debts, promises, contracts and agreements whether of a Mercantile or other Nature, and also of wrongs proper to be compensated in damages may at the option & choice of either party have and obtain the trial and Verdict of a Jury, as well for the Assessment of Damages on personal wrongs committed as the determination of matters of fact to be established in any such cause, and that the Verdict of such Jury shall be binding upon the parties in every respect and so far as the same by the Laws of England, the Verdict of a Jury legally could or ought to be of Validity force and Effect—Provided always that the Agreement of nine of the twelve Jurors who shall compose such Jury shall be sufficient and effectual to return a Verdict and that the same so made and returned shall be held as legal and effectual to every intent and purpose, in as much as if the whole twelve Jurors had agreed therein. And the Clerk of the Court shall set down the names of the Jurors on the Register of the Court in every cause where Verdicts may be returned as abovesaid—Provided Also that in all such Causes and Actions that may be between His Majesty's natural born Subjects of Great Britain, Ireland or the Plantations and Provinces in America, the Juries in such causes shall be composed of such natural born subjects as abovesaid and in All Causes and Actions between His Majestys Canadian or new Subjects, the Jury shall be composed of an equal number of each, if such be required by either of the parties, in any of the above mentioned instances"—

11th April 1785.

Resolved that the Question be put upon Mr. Mabane's proposition of Yesterday, "Whether the Article by him proposed shall make part of the Ordinance or not." The Question being put, and the Voices standing 8 Ayes and 9 Noes voted and resolved in the negative. Settled the title of the Ordinance to be as follows viz[t] "An Ordinance to "regulate the proceedings in the Courts of Civil Judicature and to establish Trials by "Juries in Actions of a Commercial Nature and personal Wrongs to be compensated in "Damages."

13th April 1785.

Mr. Mabane presented and read in English and French his reasons of dissent from the Resolutions of the Council upon the Ordinance for regulating the proceedings in the Courts of Civil Judicature &c as follows viz[t].

"Having during the Course of the Sessions declared myself averse to Innovations "in general in the present circumstances of the Province, I think it my duty now to enter "upon the Journals my reasons of dissent from a resolution of the Council whereby the "trial by Jury in Civil causes is adopted under restrictions."

The ground work of this material change in the Municipal Laws of Canada is said to be the 12th and 16th Articles of the Kings Instructions,[1] the first of which was sent to His Excellency Governor Carleton in the year 1774 or 5 soon after the Act of Par-

[1] See pp. 474-5. The instructions given to Haldimand in 1778 simply continued those given to Carleton in 1775 (see p. 419) with the addition of a few new items, chiefly contained in article 16. See p. 475.

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liament which regulates the Province of Quebec had been passed, and the Second of April 1778 was transmitted in that Year to His Excellency Governor Haldimand subsequent to the Ordinances which had been made by the Legislature of this Country. I therefore put a very different Construction upon the Royal instruction from that which those who have voted for the Innovation have done.

The 12[th] Article of the Instruction recommends to the Consideration of the Council whether the Law of England may not be at least *in part* the rule of decision in personal actions &[ca] and the 16[th] Article transmitted to the Governor in 1778 makes mention of Ordinances having been framed and Ordained for establishing Courts and directing a *proper* mode of administering Civil and Criminal Justice *Conformable to the Spirit and intention of the Act of Parliament therein mentioned* and recommends the continuing amending or inforcing such ordinances or making any farther or necessary change and regulation in the courts established or in the mode of administering Justice Provided that such Ordinances be strictly conformable to the act of Parliament and the tenor of these Instructions—I am therefore fully persuaded however inclined His Majesty might be to recommend useful and necessary deviations from the Laws of this Province Established by the Quebec Act no such material and fundamental Alteration as that of the Introduction of the Trial by Jury could be meant or intended, because such would be contrary to the spirit and intention of the Act of Parliament which with a generosity and liberality becoming the British Nation gives to the Canadians their own Laws, Customs and Usages—

2[ndly] Experience has shewn numberless inconveniences attending the Trial by Jury in this Province whilst that Mode subsisted from the year 1764 to the year 1775. Few people who were then in the Province can be ignorant of these inconveniences or how little Acceptable the mode of Trial by Jury was to the people or how hurtful it was to their Interests. Juries were at that time optional, but instead of being in repute, it is a fact well known that towards the latter years of the period in which they subsisted few causes were tried by Jury. It appears by an Authenticated List or Extract from the Record of the Court of Common pleas for the District of Quebec laid before the Council that for upwards of seven years from October 1768 to February 1775 there were only 58 Causes tried by Jury in that Court and of these several were absentee causes or suits brought against persons absent from the Province, which by an Ordinance behoved to be laid before a Jury and therefore cannot be said to be at the desire of either party.

The petitions of the Canadians which procured the Quebec Act (14 Geo: 3. Cap 83) and the undeniable Evidence which the Preamble of that wise and Salutary Law affords of the sense which the Parliament of Great Britainn at that time entertained with regard to the impropriety of changing the Laws and Usages of a numerous people and of an extensive Country, as well as the inadequateness of the system which had been introduced in room of the Ancient Law, of which the trial by Jury in Civil Causes at the option of the parties was a principle part, is in my opinion, conclusive, because every circumstance and every argument against such a change operates as powerfully at this day as it did then, and perhaps more so from the late revolution in America.

I therefore cannot agree with those who in making regulations for this Country pay not sufficient attention to the total difference of circumstances in almost every particular from those of England, where the trial by Jury has been coeval with the Law itself. Indeed nothing can afford more convincing proof of the impropriety of the trial by Jury in Civil causes than the stretches that have been made to accomodate it to these circumstances viz. By making the Agreement of nine of the Jurors a Verdict, and changing the qualification of Jurors from the Laws of England. These circumstances suffice to shew that this Province is unfit to receive the Trial by Jury as practised in England. The unanimity of the 12 Jurors is considered by many Authors as one of the Excellencies of the Institution and from the difficulty of finding Jurors in this Country unconnected by Interest and friendship with the Parties, the deviation from the Laws of England appear to me peculiarly unfavourable to the London Merchant as well as to the Canadian Merchant or Trader—The Qualification of Jurors instead of being debased from what the English Law requires perhaps ought to have been augmented.

3rdly The Changes from the french law that were made by the Ordinance of 1777,[1] in favor of commerce, such as the introduction of the English Law of evidence in Commercial Cases and the attachment of the person as well as of the Effects for the satisfaction of all debts due to Merchants for goods by them sold, shew'd no want of attention to the interests of trade, and His Majesty's 12th Instruction and therefore no doubt could be entertained, that the Council would, as far as in Justice it ought, extend its deliberations in favor of commerce and in protection of the British Merchant, but much might have been done without going so far as to erect a new Tribunal in the Country unknown to its fixed Laws, and which in practice will be found in many respects incompatible with them. The examination of *Experts* known to the french law served the useful purpose of establishing the matter of fact independent of the Judges, in difficult and uncommon cases, as well as proving the practice therein and fixing valuations on all disputed property and Workmanship, and in settling intricate Matters of Account &ca; The French law provides Arbiters—In these Cases the Law is written and the decision of the Courts is subject to review

Whereas by the Introduction of Juries the Canadian Merchant or Trader sees no longer the rule of decision of his property in litigation which is or may be absorbed in the general Verdict of a Jury.

4thly—Tho' convinced by the experience of 24 years constant residence in the country and 20 years study and practice of the law as a judge, that the trial by Jury in Civil Causes was improper in general; yet as the Council had voted the contrary I thought it my duty to propose in my turn that mode which I conceived the least prejudicial to the Canadians, and accordingly did make a proposition of the 9th instant entered upon the Journals, but the Council rejected it, tho it complied in everything with the desires of the British Subjects, except that it gave to the Canadian Merchant in his disputes with them in commercial cases the choice of having his property decided agreeable to the Laws and usages of his native Country, which by the act of Parliament were granted to him without reserve, and that he should not be forced into a mode of trial to which he might be averse.

5thly When I consider the 9th and 10th Articles of the Ordinance proposed by the Committee of which a Copy is annexed, I thought it my duty to propose an additional Article which is inserted upon the Journals and which could serve no end but to quiet the minds of the Canadians and reconcile them to the change made in the Ordinance, by giving them the most positive assurances that nothing which was not clearly expressed was innovated—This Article however salutary was rejected solely by the same Majority which at the Commencement of the Sessions voted against postponing the consideration of the new Ordinance till next Sessions—I have further to observe that the time was improper for changes of this nature and that more compleat evidence of the necessity or practicability of introducing Juries in civil causes than vague lists of names laid upon the table should have been produced to the Council, a minute enquiry ought to have preceded the business and every necessary preparation made before hand

For these reasons I dissent from the resolution of the Council and shall be much satisfied if experience shall prove that I am wrong in my opinion and that the innovation will be found useful to the People.

(signed) A: MABANE.

[1] See p. 466.

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THE LIST OF JURORS REFERRED TO IN NOTE 8[1]

Names	Occupation	Names	Occupation
Joseph Descheneau	Esquire	William Lindsay	Esquire
Louis Langlois	Merchant	John Purss	Merchant
Michael Longvall	Dº	Constant Freeman	Dº
Francois Pomereau	Dº	Adam Lymburner	Dº
Antoine Serindac. 5	Dº	Robert Willcocks	Dº
Jean Baptiste Guirault	Dº	Nathaniel Taylor	Esquire
Jean Baptiste Le Brun	Dº	Thomas Sketchley	Auctioneer
Chas Berthelot	Dº	John Young	Merchant
Jacques Perrault	Dº	Henry Cull	Dº
Louis Fromenteau. 10	Dº	Robert Lester	Dº
Jean Bte Le compte Dupré	Esqr	James Todd	Dº
Pierre Marcoux	Merchant	David Barclay	Dº
Louis Marchand	Dº	John Blackwood	Dº
Pierre Dufan	Dº	Alexander Davison	Dº
Louis Duniere—15	Dº	Mr McNider	Dº
Michael Cornud	Dº	William Burns	Auctioneer
Louis Freemont	Dº	John Painter	Merchant
Charles Pinguet	Dº	William Gill	Dº
Jacques Perras	Dº	John Jones	Dº
Liberal Dumas—20	Dº	John Pagan	Dº
Charles Voyez	Dº	Simon Fraser, Junior	Dº
Antoine Raby	Dº	Roderick Fraser	Dº
Joseph Duval	Dº	John Buchanan	Dº
Amant Primont	Dº	James Johnston	Esqr
Josep Marie Cherrier—25	Dº	John Antrobus	Merchant
Louis Turgeon	Merchant	Simon Fraser—Senior	Dº
J. Bapte Brassard	Dº	Richard Dalton	Dº
Antoine Gosselin	Dº	Matthew Lymburner	Dº
Etienne Gouvereau	Dº	Obadiah Aylwin	Dº
Antº Cureux Sr Germain	Dº	Alexander Willson	Dº
Alexis Monjeon	Dº	Meredith Wills	Dº
Henri Crebassa	Dº	Andrew Cameron	Dº
Francois Duval	Dº	Jacob Rowe	Dº
Charles Guiyrand, fils	Dº	Alexander Ross	Dº
John Lynd	Dº	David Ross	Dº
John McCord, Junior	Dº	John Walter	Dº
John Munroe	Dº	George Irwin	Dº
William Roxborough	Dº	Ezekiel Freeman	Dº
Matthew McNider	Dº	David Shoolbred	Dº
Robert Woolsey	Dº	John Lees	Dº
John Melvin	Auctioneer	William Lindsay, Junr	Dº
Thomas Aylwin	Esquire	George Stuart	Dº

(signed) { A. MABANE.
P. PANET.

[1] Canadian Archives, Q 27-1, p. 224.

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A PAPER BY MR JUDGE PANET, REFERRED TO BY NOTE 9.[1]

Des Interrogatoires sur faits et Articles

Du Tems du Gouvernement françois il n'y avoit point de Cour de Chancellerie en Canada, cependant Le Conseil superieur de Quebec avoit le pouvoir de donner des Lettres d'Emancipation et de Restitutions Contre les Actes susceptibles d'estre Rescindéz, ces Lettres etoient addressées aux Juges des Jurisdiction inferieures qui prononcoient à leur Enthezinement ou a leur rejection, il y avoit appel des Jugements de ces Cours au Conseil—

On ne souffroit pas beaucoup ou pour mieux dire on ne souffroit pas, de ce deffaut de Chancellerie puisque les plaideurs avoient le droit de se faire interroger sur faits et articles en vertu de L'Ordonnance de Louis Quatorze de L'Année 1667. Enregistré au Conseil superieur de Quebec.

Ces Interrogatoires etoient bien necessaires dans des Causes obscures pour découvrir la verité ; voici tout au long L'Ordonnance de 1667.[2]

Article 1[er]

Permettons aux Parties de se faire Interroger en tout etat de cause sur faits et Articles pertinents concernant seulement la matiére dont est Question pardevant le Juge ou le different est pendant, et en cas d'absence de la partie pardevant le Juge qui sera par lui commis le tout sera retardatoire de L'instruction et Jugement.

2.

Les Assignations pour repondre sur faits et Articles seront donnée en Vertu d'Ordonnance du Juge sans commission du greffe, encore que la partie fut demeurante hors du Lieu ou le different est pendant, et sans que pour L'Ordonnance le Juge et le greffier puissent pretendre aucune chose.

3.

L'Assignation sera donnée personne à au domicile de la partie et non à aucun domicile elu n'y a celui du procureur, et sera donné Copie de L'Ordonnance du Juge et des faits et Articles.

4.

Si la partie ne compare aux Jour et Lieux qui seront assignés ou fait refus de repondre sera dressés un proces verbal sommaire faisant mention de L'assignation et du refus, at sur le proces Verbal seront les faits tenus pour Confessés et averés en toutes jurisdictions et Justice, meme en nos cours de Parlement grand Conseil, Chambre des Comptes, &[ca]

5.

Voulons néanmoins que si la partie se presente avant le Jugement du procés pour subir l'interrogatoire, elle soit recüe à repondre à la charge de païer les frais de L'interrogatoire et d'en bailler copie a la partie, meme de rembourcer les depens du premier proces verbal sans pouvoir les repeter et sans retardation du Jugement du proces—

[1] Canadian Archives, Q 27-1, p. 227.

[2] This constitutes "Titre X" of the "Ordonnance de Louis XIV, roi de France et de Navarre, du mois d'avril 1667." This ordinance was framed for the purpose of introducing uniformity, simplicity and certainty into the general laws of the Kingdom of France. This section will be found in Vol. I, p. 124 of the "Edits, Ordonnances" &c. Quebec 1854. The text here given follows the copy in the Public Record Office, but, on comparison with the text in the Quebec edition, it will be found that there are several variations. Where possible the translation follows the text here given.

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6.

la partie repondra en personne et non par procureur n'y par ecrit, et en cas de maladie ou Empechement Légitime le Juge se transportera en son domicile pour recevoir son interrogatoire.

7.

Le Juge apres avoir pris le Serment recevera la reponse sur chacuns faits et Articles et pourra même d'office interroger sur aucuns faits quoiqu'il n'en ait point ete donné Copie

8.

Les réponces seront precizes et pertinentes sur chacuns faits et sans aucuns Termes injurieux et Calomnieux

9.

Seront tenus les Chapitres Corps et Communautez de nommer un Sindic procureur ou Officier pour repondre sur les faits et Articles qui lui auront été communiquez et a cette fin passeront une pouvoire spécial dans lequel les réponses seront Expliqués et affirmés veritables autrement seront les faits tenus pour Confessés et averés sans prejudice de faire interroger les Sindics procureurs et autres qui ont agit par les ordres de la Communauté sur les faits qui les concerneront en particulier pour y avoir par le Juge tel Égard que de raison —

10 et d[re]

Les Interrogatoires se feront aux depens de ceux qui les auront requis sans qu'ils peuvent en demander aucune repetition n'y les faire entrer en Taxe, meme en cas de Condamnation de depens.

Il seroit à souhaiter que cette Loy si simple fit partie des formes de proceder, L'Ordonnance derniere garde le silence sur un objet si interressant—

ANOTHER PAPER, BY MR. JUDGE PANET, REFERRED TO IN NOTE 9.[1]

Des Tutelles et Curatelles.

Du Tems du Gouvernement francois, les Juges de Quebec, Trois-Rivieres et Montreal, non seulement rendoient la justice en toutes Actions civiles, mais encore procedoient a L'election des Tuteurs, Subrogéz tuteurs et curateurs sur assemblée de parents et amis au nombre de sept, ils n'avoient pas des commissions particuliéres pour ces sortes d'objets. cette forme de proceder fut continuée apres la Conquete jusqu'a L'Année 1764. Tems auquel le General Murray introduisit dans les Cours de Justice les loix d'Angleterre ce même Général accorda au Juges Mabane et Fraser des Commissions de Surrogats.

En Vertu de cette commission le Juge surrogats de Montreal (J'ignore ce qui se passa à Quebec) au lieu d'Actes de Tutelles donna des Lettres d'administration suivant la forme Angloise, et obligea les administrateurs a donner des cautions. Ces Cautionnement repugnerent beaucoup aux habitans plusieurs ne firent point d'Inventaire faute de pouvoir trouver des Cautions ceux qui en trouverent furent obligez d'Envoyer leur Inventaire a Quebec seul Bureau d'Enregistrement, les frais d'Enregistrement etoient considerable et diminoient beaucoup le peu de bien qu'ils avoient, cette nouvelle methode de proceder Occasiona beaucoup de murmures et de plaintes, elles parvinrent en L'Année 1767. à son Excellence le General Carleton qui Enjoignit aux Juges de laisser la nouvelle forme, et de reprendre L'Ancienne connue plus aisée et bien moin Couteuse, ce qui fut pratiqué jusqu'au 1775.

[1] Canadian Archives, Q 27-1, p. 231.

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Il auroit été a Souhaiter qu'on eut pensé Lors de la redaction des ordonnances à promulger les Loix concernants les Tutelles et Curatelles, on oublia des objets si interressants. Les Juges des plaidoyers Communs furent pourvûs de Commissions du Gouverneur pour accorder des Lettres d'administration, et sans penser que ces Commissions n'etoient pas necessaires, ils se qualifioient de Juges de la Cour des Prerogatives et proceder aux Elections de Tuteurs et Curateurs suivant la forme et les anciens usages. cependant ils accorderent des Lettres d'administration aux anciens Sujets suivans la forme Angloise.

les Juges des plaidoyers Communs prevoyant le danger et les difficultés d'avoir deux formes de proceder dans une même Province prirent la resolution il y a 4 ou 5 ans de presenter au Conseil un projet de formes de proceder pour les Actes de Tutelles et Curatelles il en resultoit plusieurs avantages. 1° L'instruction des Anciens Sujets. 2° Une forme permanente, d'autant plus necessaire que les françois n'ont point de Loix Ecrittes pour ces sortes d'actes, l'usage Constament pratiqué en Canada depuis l'Etablissement du pais tient lieu de Loix mais la pluspart des Membres du Conseil soutinrent qu'il etoit inutile de faire une Loy à cet egard, vous avez dirent-ils des usages qui tiennent lieu de Loy Continués les, il fut faite des reflections sur ce qu'on avoit accordé des Lettres d'Administration suivant la forme Angloise ; depuis ce Tems les Juges ont continué a donner des Lettres de Tutelles et Curatelles selon la forme françoise, reflechissants qu'ils seroit dangereux d'avoir deux formes de procedée dans une meme Province et L'embarras qu'il y auroit lorsqu'un des conjoints par marriage seroit né en Angleterre et L'autre en Canada, distinction epineuse et sujets à mille difficultés

De L'insinuation et Enregistrement des Donations Entrevifs et des donations faites entre conjoints par Contrat de Marriage.

par la coûtume de ce pais Toutes donations Entrevifs doit etre Enregistrée dans les 4 mois à peine de nullité, avant la Conquete, L'Enregistrement se faisoit dans les Registres des Greffes des differentes Jurisdictions et depuis Jusqu'a présent cet usage a ete continué.

Il est de la plus grande necessité de laisser aux Juges de la Cour des Plaidoyers Communs, l'administration de ces sortes d'objets dont ils connoissent la forme, sans cela il naitra une multitude de procés qu'on doit soigneusement eviter.

I certify the above from Page [i.e. 186] to this page, inclusively to be a true Copy of the Originals of Record in my Office.

J: WILLIAMS
Council Office. Quebec
24th May 1787.

Endorsed B
In Lord Dorchester's N° 17.
of 13 June 1787.

(Translation.)

A PAPER, BY MR. JUDGE PANET, REFERRED TO BY NOTE 9.

Concerning Examinations on Facts and Evidence.

At the time of the French Rule there was no Court of Chancery in Canada, but The superior Council of Quebec had the power of giving Letters of Emancipation and of Restitution against Acts which could be repealed, these Letters were addressed to the Judges of the inferior Jurisdiction, who gave Judgment on their Ratification, or their rejection. Appeal could be made from the Judgments of these Courts to the Council.

The people did not suffer much, or rather they did not suffer at all from this lack of a Court of Chancery, seeing that the litigants had the right to insist on being examined concerning facts and evidence in virtue of the Ordinance of Louis Fourteenth of the Year 1667, registered at the superior Council of Quebec.

These Examinations were very necessary in obscure Cases for discovering the truth; here follows in full the Ordinance of 1667.

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Article 1[a]

We hereby give Permission to all Parties to insist on Examination in any kind of case, on pertinent facts and Evidence relating only to the affair in Question before the Judge where the dispute is pending, and in the case of the absence of the party then before the Judge who is commissioned by him, the whole without retarding the information and Judgment.

2.

Summons to answer concerning facts and Evidence shall be issued in Virtue of the Order of the Judge without commission from the record office, even though the person concerned is residing out of the Place where the suit is pending, and without an Order, the Judge and the Recorder have not authority to undertake anything.

3.

Examination shall be granted to any one at the house of the party concerned, and not at any other house chosen nor at the house of the procureur, and a Copy of the Order of the Judge and of the facts and Evidence shall be given.

4

If the party concerned does not appear at the Day and Place assigned, or refuses to answer, a summary verbal process shall be issued making mention of the Summons, and of the refusal, and in the Verbal process the facts shall be held as Confessed and proved in all jurisdictions and Courts of Justice, even in our Courts of Parliament, grand Council, Office of Public Accounts, &c[a].

5.

It is our will nevertheless that when the party concerned appears before the Judgment of the suit to undergo examination, he shall be called upon to answer to the demand to pay the cost of the examination and of furnishing a copy thereof to the other party, and also to repay the costs of the first verbal process, without the right to repeat them and without delay in the Judgment of the case.

6.

The party concerned shall reply in person, and not through a procureur, nor by writing, and in case of illness or of Lawful Hindrance the Judge shall proceed to his house to carry out the examination.

7.

The Judge after having administered the Oath shall receive the reply to each fact and Evidence, and in virtue of his office shall have power to ask questions concerning any facts, although he may not have been given a copy thereof.

8.

Answers shall be precise and pertinent on each charge, and without any injurious or calumnious Expressions.

9.

Chapters, Bodies and Communities shall be held empowered to nominate a Syndic, Attorney or Officer to reply to the facts and Evidence communicated to him, and to this end shall issue a special power in which the replies shall be Explained and affirmed to be true, otherwise the facts shall be held as confessed and proven without prejudice to the examining of Syndics, attorneys and others who have acted by the order of the

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Community with respect to the facts which specially concern them so that they may receive from the Judge due consideration.

10 and last.

Examinations shall be held at the expense of those who shall have required them, without their having the right to demand any repetition nor to enter them as a Tax, even in case they are condemned to pay the costs.

It is to be wished that this simple Law had been made a part of the forms of procedure, the last Ordinance is silent on this most interesting point.

ANOTHER PAPER BY MR. JUDGE PANET, REFERRED TO IN NOTE 9.

Concerning Guardianships and Trusteeships.

At the time of the French Government, the judges of Quebec, Three Rivers, and Montreal, not only administered justice in all civil Actions, but also took action in the Election of Guardians Surrogate Guardians, and Trustees, relations and friends to the number of seven being assembled. They had no special Commissions for this class of cases. This form of procedure was continued after the Conquest till the Year 1764. At the time in which General Murray introduced the laws of England into the Courts of Justice, this same General granted Surrogate Commissions to Judges Mabane and Fraser.

In virtue of this commission the surrogate Judge of Montreal (I am not aware of what was going on at Quebec) gave Letters of administration instead of Acts of Guardianship, according to the English forms, and required administrators to give sureties. The inhabitants were most averse to this giving of sureties, and many of them did not make an Inventory, as they were unable to find Sureties. Those who did find them were obliged to send this Inventory to Quebec, which was the only Registration Office. The costs of Administration were considerable and greatly diminished the small advantage which they derived from it. This new Mode of procedure caused many murmurs and complaints, and in the Year 1767 they came to the ears of his Excellency, General Carleton, who directed the Judges to omit the new form, and return to the Old one, which was better known and much less Costly. This was the practice until 1775.

It would have been desirable that they should have thought at the time of the compilation of the regulations, for the promulgation of Laws concerning Guardianships and Trusteeships, but these interesting points were forgotten. Judges of the Court of Common Pleas were provided with commissions by the Governor for the granting of Letters of administration, and without considering that these Commissions were unnecessary, they qualified themselves as Judges of the Court of Prerogatives, and proceeded to the Election of Guardians and Trustees according to the ancient form and usages, while they granted Letters of administration to ancient Subjects according to the English form.

The Judges of the Court of Common Pleas, foreseeing the danger and difficulty of having two forms of procedure in the same Province, 4 or 5 years ago, formed the resolution of presenting to the Council a plan of forms of procedure for Acts concerning Guardianships and Trusteeships. Many advantages resulted from this action. 1st The Information of the Ancient Subjects. 2d A permanent form, all the more necessary because the French have no written Laws for this class of acts. Customs invariably practised in Canada since the Settlement of the country took the place of Laws, but the greater part of the Members of Council maintained that it was useless to frame a Law to this effect; you have, said they, customs which take the place of Laws, Continue them; Objections were raised to the granting of Letters of administration according to the English form; since that Time Judges have continued to give Letters to Guardians and Trustees according to the French form, thinking that it would be dangerous to have two forms of procedure in the same Province, and considering the Confusion there

would be when one of the parties joined in marriage should have been born in England, and the other in Canada, an equivocal difference which would give rise to a thousand difficulties.

Concerning the Introduction and Registration of Donations Intervivos and Donations between those joined by Contract of Marriage.

According to the customs in force in this country before the Conquest all donations Intervivos ought be registered within 4 months, under pain of lapsing, Registration was made in the Registers of the Record Offices of the different Jurisdictions and from that time to the present this custom has been in force.

It is extremely necessary to leave the administration of this class of subjects in the hands of the Judges of the Court of Common Pleas, as they are acquainted with the customary forms. Otherwise a multitude of lawsuits would be the result, which ought to be carefully avoided.

C

REPORT OF THE COMMITTEE OF COUNCIL RELATING TO COMMERCE & POLICE WITH A FEW OTHER PAPERS CONCERNING THOSE SUBJECTS, SCORED UNDER IN THE INDEX WITH RED INK.[1]

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To His Excellency the Right Honorable Guy Lord Dorchester Captain General and Governor in Chief of the Colonies of Quebec, Nova Scotia and New Brunswick and their Dependencies &c. &c. &c.

THE REPORT OF THE COMMITTEE OF COUNCIL ON COMMERCE AND POLICE.[2]

May it Please your Lordship.

In obedience to your Lordships commands signified in Council on the 6^th November last, whereby you was pleased to appoint us, to be a Committee to take into consideration the

[1] Canadian Archives, Q. 27-1, p. 235. The index to this Report will indicate the varied and interesting character of the subjects dealt with. Only some of these, however, have a sufficiently direct bearing upon the constitutional issues of the time to be included in this volume. The page numbers in the left hand column refer to the copy in the Canadian Archives, while the numbers, in brackets, which follow the articles, indicate the pages at which those reproduced in whole or in part in this volume will be found. Those papers referred to in the title as underlined with red ink are marked with an asterisk. As indicated in the Minutes of Council (see p. 591), those appointed to be members of this Committee were Messrs. Levesque, Harrison, Collins, Grant and Pownall.

[2] See Q 27-1, p. 237.

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"External and Internal Commerce and regulation of the Police, having "an Eye to the ancient Laws and usages of the Province, and to report "to your Lordship our considerations thereon, with as much Dispatch "as we should find convenient."

We now with the utmost diffidence, lay before your Lordship not only Our report, but a Journal of our proceedings in order to obtain the thoughts of others, more experienced than ourselves, on objects of such extensive concern to the Wellfare of the Province, and the happiness of his Majesty's subjects under your Lordships Government—

At our first meeting as a Committee, on the 13th of November, we perceived the necessity of calling for the assistance of our fellow citizens on the considerations committed; considerations in which the Happiness and greatest Interests of the Country were evidently to be contemplated.

We therefore thought it our duty (consistent with the powers communicated to us by your Excellency) to consult the opinions and take the Ideas of the principal Merchants and Magistrates of the Province, rather than solely to hazard opinions of our own—

To obtain these in the most unbiassed manner, we immediately wrote to the Magistrates—Merchants and Citizens of Quebec, Montreal and Three Rivers. We acquainted them with Your Excellency's recommendations to us, and entreated their sentiments. We also wrote to the Collector and Comptroller of His Majesty's Customs, requesting an Account of the Imports and Exports and of the Shipping employed in the Trade and Commerce of the Province since the Peace.

We wrote to Mr. Jas Frost, Master of the Port, Mr. Steel Master of His Majesty's Provincial Vessel the Mercury, Mr. Constant Freeman an experienced Ship Master, Mr. Chenique and Mr. Peter Fraser experienced Pilots, requesting their Information respecting the present state of the Navigation and Pilotage of the River Saint Lawrence, and the Improvements that might be made therein.

Your Lordship was pleased to order to be laid before us the Application of Levi Allen Esqr on behalf of the state of Vermont for Commercial intercourse with this Province, and through it to Britain and the other Country's in His Majestys Dominion; And at same time, a Letter from the Collector of His Majestys Customs, stating the Revenue Laws which apparently impeded Such Intercourse.

We received by Your Lordships command two Letters from Mr. Geo. Wm Howard a Merchant of Jamaica, and one from Mr. Bannatyne a Merchant of St Christophers, on the subject of the Trade from the West Indies to this Province; the importation of Foreign Molasses, and the Suppression of Distilleries: and Your Excellency was also pleased to refer to us the observations of Mr. James Grant a Merchant of this place on the same subject.

By Your Excellency's command, we received from Capn Le Maistre a List of His Majestys Vessels employed on the Lakes Ontario, Erie and Huron; and from Lieut. Governor Hope, a Letter and Representation of Mr. Isaac Todd Merchant in Montreal, respecting the Navigation, and the Transport and carriage of Merchants Goods from, and to, the different ports or posts, on those Lakes.

Lieut Governor Cox, and John Collins Esqr have represented to us the state of the Cod Fishery in the Gulph and river St. Lawrence, and pointed out such regulations as seem necessary for carrying it on. We take the Liberty of annexing their Papers, and of entreating Your Excellency's reference to them—

On the 4th December we received the return or Report of the Gentlemen to whom we had written respecting the Pilotage and Navigation of the River, which with other Papers, we also annex for Your Excellency's Inspection—

On the 8th December we received from the Collector and Comptroller a return or abstract of certain Exports, Imports, and Shipping (from 1st May 1783 to 1st December. 1786.

On the 27th December, the Magistrates of Quebec presented their sentiments respecting the Amendments which seem requisite in the Police of their District, and other Objects of useful regulation.

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On the First January, the return of the Magistrates and principal Merchants of Three Rivers respecting regulations of Trade and Police.

On the 6th January the Merchants of Quebec delivered their opinions and representations on a variety of objects of Commercial & Political regulation; to which they have annexed the Copy of a Petition to His Majesty Transmitted to the Right Honorable Lord Sydney in the Fall of 1785. And on the 27th January the Magistrates and Merchants of Montreal delivered their opinions on a variety of similar and other objects, to which they have annexed a Petition to His Majesty transmitted Fall 1785—

In *these* they have deeply and accurately treated, and Judiciously reasoned, on the actual Situation & various Interests of the Province. We should therefore be wanting to them, and to Your Excellency, if we did not annex and recommend their representations to Your Lordship's most serious consideration and reflection.[1]

We proceed to submit our own opinions, as far as we have been able hitherto to form any—[2]

REPORT OF THE MERCHANTS OF QUEBEC BY THEIR COMMITTEE TO THE HONORABLE COMMITTEE OF COUNCIL ON COMMERCIAL AFFAIRS.[3]

Article 10th—"Recovery of Debts on the Principles of the English Commercial "Laws, speedy processes, and Additional Laws for the Recovery of Small Debts in the "Country."

Observation—The Kings Proclamation of October 1763 promised the future Settlers in this Province the Benefit of the Laws of England:—Those Laws were accordingly introduced by an Ordinance of the Governor and Council in September 1764,[4] but unfortunately abrogated in all civil causes by the Act of the 14th George: 3d Chap. 83.[5] which statute instead of remedying temporary abuses, introduced great Evils, particularly to the Trading Interest of the Nation. The Merchants in England and those of this Province have severely felt the Effects and disposition of Laws to which they were utter Strangers, the principles whereof are anticommercial altogether.

The Custom of Canada is a system so imperfect and defective that the decisions in the Courts have been arbitrary and destitute of uniformity; The Court of Montreal differs in its practice as well as decrees from that of Quebec, both Courts agree in not Confining themselves to Rules of Law, but occasionally decide on the Equity of the case contrary to the letter of the Law. Thus the Custom of Canada, the general laws of France, The Roman Code, and in some Commercial points the Laws of England have been resorted to; but the most dangerous of all systems is that of the decisions in Equity of Courts, strictly constituted as Courts of Law, without the ordinary Rules, Principles and Maxims of Courts of Equity to govern them.

This Versatility in the decrees of the Courts, alone calls for a solid system of Laws: and surely no better can be resorted to than the Laws of England to govern the property of British Subjects.

The Imports and Exports of the province being upwards of Half a Million a year and from the nature of the property liable to be more affected by the Laws of the Country, and the practice of the Courts than any other. We therefore recommend a re-introduction of the Common and Statute Laws of England as the general Rule for the decision of all matters of Controversy relative to personal property and civil Rights in all personal Actions grounded upon Debts, Promises, Contracts and Agreements, whether of a Mercantile or other Nature and also concerning wrongs proper to be compensated in Damages with an exception to the Statutes regarding Bankrupts and other local laws hereafter to be explained, as inapplicable to the situation and Circumstances of the British Colonies in America in general, or this in particular—

[1] These papers are referred to in the index above, where the page references are given.
[2] As the committee deal almost entirely with economic questions, this section is omitted.
[3] See Q 27-1, p. 260. Articles 1 to 9 (pp. 260-289) are omitted as dealing with commercial and similar matters.
[4] See p. 149.
[5] The Quebec Act, see p. 401.

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With an exception also to all Real actions or Controversies respecting the titles of Land, and the Tenure, Descent, Alienation, incumbrances and Settlements of Real Estates and the distribution of the personal property of persons dying intestate, in all which His Majesty's new Subjects are most interested for the Decision whereof, except in certain cases hereafter to be mentioned, Resort should be had to the Laws and Customs of Canada, but that Juries should be granted in all Courts having original Jurisdiction, if demanded by either party, in all and personal Actions whatever.

There must exist some Capital Defects in the Constitution or Practice of all the Courts of Law, on Account of the great delay and Procrastination in the Decision of Causes, which occasions many unnecessary appearances and attendances and creates ruinous expences to the parties.

It is found by experience that the frequency of Holding Courts tends to keep up a Spirit of Litigation among the People, without procuring the Effect intended, a speedy administration of Justice; We are therefore of opinion that stated terms, not more than Six, nor less than four in the year, are more eligible than these Continual Courts, and that the Court of Kings bench should be restored to its former Jurisdiction and powers in civil causes.

To grant to Justices of the Peace in the country the powers they heretofore possessed[1] in determining matters of property to a small amount under the Ordinance of the 17th September 1764 and thereby to prevent the great expences of distant Suitors to procure Justice, to rectify the rules of practice, and to reduce the Fees and Expences of Litigation in all the Courts, suited to the Abilities of the People, we humbly apprehend would be productive of great good to the province.

It would be proper to divide the Province into more Districts, or rather Counties, erecting a Jurisdiction for Three Rivers according to its ancient Boundaries, from St. Anne to Berthier on the North, and from St. Pierre to Yamaska on the south side of the river Saint Lawrence—'— Inferior Jurisdictions should be granted to Cataraqui[2] and to Chaleur Bay[3] as Counties, which would give this mutilated Province a respectable appearance, and forward its Settlement, a measure we think, dictated by good Policy.

Article 11th "The present Establishment for Appeals in Commercial Causes—"

Observations—The Defects in the Practice in the Inferior Courts as pointed out in the observation in the last Article, have made their way into the Court of Appeals,[4] which for these eight years last past has laboured under a great Disadvantage, namely, that of not having one Gentleman bred to the Science of the Law presiding or sitting in that Court in order to explain the Law, and mark out the Errors in the proceedings if any, to the other Members. Indeed it is much to be lamented that there do not preside in all the Courts regularly bred professional Men, capable of conducting the Business with propriety and Dispatch, to the want whereof, we in some measure attribute the great delays and prolixitys of the proceedings in the decisions of causes, without any imputation on the Judges.

The great number and fluctuation of the Members of this Court must also of necessity embarrass Decisions and create Delays. If this Court was in its Constitution assimilated to that of others in His Majesty's Colonies, we humbly conceive that the Alteration would be beneficial to the Subject.

Article 12th. The Establishment of a Court of Chancery—

Observation—A Court vested with Constitutional powers and Established under wise Rules and Regulations to determine Causes in Equity by an easy process, avoiding as much as possible dilatory pleas, with convenient dispatch and very moderate fees and expences will tend to grant relief to those who actually suffer, or think they do so, under the rigour of legal Decisions in particular cases, A Court thus Constituted, in which one or more able professional men shall have a Seat, is a very desirable Establishment,

[1] Before the introduction of the Ordinance of 1770 (see p. 280) which abrogated the powers previously exercised under the Ordinance of 1764, (see p. 149).
[2] Afterwards Kingston, the centre of the western settlements of the Loyalists.
[3] Afterwards known as the District of Gaspé.
[4] The Court of Appeal, like the Executive Council, consisted of any five or more of the members of the Legislative Council.

and what this Province has been deprived of, and many to their great concern have felt the Want of, since the year 1775—[1]

Article 13th "On a Registry of all Deeds."

Observations—The Frauds committed by Debtors in Mortgaging their Estates for much more than their value, for want of a Public register Office[2] are too sensibly felt by Almost every Merchant in the Province—It would be a very salutary measure to record All Incumbrances on real Estates in Order to give them validity and thereby prevent such frauds—And the great objection thereto that it would expose the secrets and situations of Families without reason, may be obviated by enacting that no person shall be entitled to information regarding the Incumbrances of an Estate without making Oath that he is interested therein, and that the Register Keeper shall give the necessary Extract and not allow the books to be examined.

But as it has been discontinued so long, and the Justice of such an expost facto Law may be questioned by some, and strongly opposed by others, may we not take the medium between the two extremes and recommend that in Case a Law to register past mortgages and Incumbrances should be impracticable That at any rate an Ordinance be enacted the next Sessions of the Legislative Council for the due registering of a *Memorial* of all Deeds of Sale, Mortgages, Obligations, Marriage Contracts, Donations, Dowers, or any other Deeds, affecting Real Estates, that shall be passed, within a short limited time, and for the future, which Memorial should specify the heads of the necessary Clauses in a consise manner with a reference to the Originals to have recourse to in case of need, to be furnished by the Notary and recorded by the Party in the Public Register's Office in Quebec within thirty days after such deed shall be passed, together with such other regulations as shall be necessary to ordain relative thereto?

It might be proper to declare in the said Law, that all leases of Houses or Lands or a Memorial thereof, recorded in the Public Registers shall be binding on the Lesser, and bind the said Leased premises, according to the Covenants, notwithstanding the claim or Right of dispossessing or ousting such Lessee by virtue of the Coutume called *Droit* de *Bourgeois* de *Paris* or by any other Law or Custom whatever—

That all Deeds, obligations, Mortgages, and Agreements executed before one or two Witnesses shall be binding on the parties and being recorded of equal validity as though the same had been passed and executed before a Notary, any Law or Usage to the contrary Notwithstanding—

Article 14th "On a Bankrupt Law"

Observation Public Credit and punctuality in dealings are not sufficiently established, nor is this Province yet ripe enough for the introduction of the Bankrupt Laws of England in their full extent, Yet we are of opinion that a Law is necessary to ascertain the Criterion of a State of Bankruptcy and to compel the insolvent Debtor in that situation to a surrender of his Books, papers, & property upon Oath for the benefit of all his Creditors, in which Law the right of the wives of all persons concerned in Trade or Commerce, to the real or personal Estate of such Bankrupt, should be ascertained. A distinction should be made in the treatment of a fraudulent and unfortunate Bankrupt, the former should be punished exemplarily yet not cruelly, lest the End be defeated, the latter on a full proof of his Losses and Misfortunes and a faithful surrender of his Effects, after a reasonable time wherein he shall have used his utmost diligence towards the Settlement of his Affairs, should be, with consent of a Majority of his Creditors in number and value entitled to a Discharge.

Article 15th "The Tenure on which the Crown Lands are hereafter to be granted, "it being an object connected with Commerce—"

Observation—In order to encourage Effectually the Settlement of the ungranted Crown Lands behind the Canadian Seignories and other parts of this extensive province by American Loyalists and other Emigrants—It would be highly necessary, we

[1] The Quebec Act came into force May 1st, 1775.

[2] Under the French system, mortgages or hypotheques were executed by notaries in whose offices alone records of these were kept; hence it was practically impossible for any one purchasing real estate or giving credit on the security of it to have any certain knowledge of how many previous obligations were registered against the property. This remained for many years one of the chief grievances of the mercantile element in the Province of Quebec.

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conceive, to make out those Grants in Townships and in free and Common Soccage similar to the Concessions in the province of Nova-Scotia, & New Brunswick, and those heretofore granted in the Royal Governments, now neighbouring States.

This is the only Tenure to which English Subjects will be reconciled, and we are firmly of opinion that it will induce a very large number of persons to resort hither to the Improvement of Agriculture, the Increase of Population, and Extension of Trade. The ancient Feudal System of holding Lands in *Fief et Seignueurie* as well as *en Roture* in quality of Vassals, is inimical to a free Commerce, and together with the Constitution of the Government, has greatly tended to prevent the Settlement of Lands and improvement of the Province hitherto, and will still have the same evil tendency until the lands to be granted are actually conceded, or declared to be intended to be so, on a more liberal tenure, for not only the desires but even the prejudices of the People ought to be considered. Nor can this proposed mode of granting new Lands operate any evil with respect to the ancient Inhabitants of the Country now holding under the feudal system for we see different tenures of Lands in many of His Majesty's Dominions without producing any bad Effects.

Measures like these, we are Confident, will soon give this Province the form and figure of a British Colony, bring forth its resources, and raise it into Consequence.

Article 16th. "That a Standard should be fixed for Weights and Measures through-"out the Province."

Observation—To regulate the Weights and Measures on a permanent Basis throughout this Province would tend to the facility of Commerce and the prevention of Frauds. Great abuses exist at this time, scarce two weights or two Measures are found exactly alike—It is not the use of French measures for grain &c and English Wheight for Flour and the like that creates difficulties, the Custom has been long understood, and well established in those particulars, but it is the irregularity thereof that requires amendment.

The proper Officer should procure and keep Stamped Weights and Measures for a Standard, the measure corresponding exactly with the French *Minot* or *demi Minot*, the only measure known here for grain, salt &ca—The measure for Linens and Woolens should be the English Yard, or Ell of five quarters of a yard. The Measure for Timber the English Foot of twelve Inches.

The measure for Wine and Spirits should be the English Wine Gallon and that for Beer should be the English beer Gallon.

The Weights used in Towns and Public Markets, and in Shops and Ware-Houses should be the English Avoirdupois weight. The Quintal or Hundred weight to be One hundred and twelve pounds of that weight. Such Officer should keep all those Measures and weights in his possession for a Standard and have power and be obliged to examine and stamp all weights and measures on being paid a reasonable allowance for his trouble, and a fine sufficient to prevent evil practices, should be levied on all persons using unstamped or deficient weights and measures—Provided nevertherless that any person making his Election to use french weights or the french Liquid or Timber measure, such should be made in a different form and of different materials from the English, for a plain distinction, and regulated also by the proper Officer to the Standards.

Article 20th— "Whether or not we should Apply for a Charter incorporating a "select number of Citizens on some good and approved plan, with power to make Bye "Laws, decide civil and Criminal causes under certain restrictions, whether under the "Stile and Title of Recorder, Mayor, Alderman, and Common Council of the City and "County of Quebec and the Precincts and liberties thereof or under any other "Denomination?"

Observation—The wretched state of the Police of the City of Quebec is too obvious to need explanation. The Regulations that are made, however useful and proper are but little attended to, and ill executed; the Magistracy is unconnected, without a Head,

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and without inferior Officers to put the Laws in force, their Mandates want efficacy and do not enforce subordination in the People.[1] There is, there can be no remedy but a Chief Magistrate with subordinate officers to put the Laws in force and keep up peace and good order in the Towns. - - A Charter to incorporate the City of Quebec for the above and other good purposes would, we humbly apprehend, be attended with Salutary Effects.

Article 21st "And a like Charter for the City of Montreal"—

Observation—It appears to us that the City of Montreal being under the like predicament with that of Quebec, would also be much benefited by a Like Charter, of which however they are the proper Judges.

Article 22d "The establishing of Schools and Seminaries for the Education of "Youth, from those funds now unemployed as well in England as in this Province, and "particularly a respectable College in this City, with able Professors, and erecting Free "Schools at convenient distances throughout this extensive Province, for the purpose of "opening and enlarging the human mind, conciliating the affections of all His Majesty's "Subjects, and having a tendency to render this a happy and flourishing Province"—

Observation—The Education of Youth in this Province, except in the Cities, where indeed the Schools cannot be boasted of, is confined altogether to the Female sex, there are some five or six small indifferent Schools dispersed thro' the Country kept by Nuns called Sisters of the Congregation, for instructing Girls, but not a single one that deserves the name for Educating Boys, hence all the Inhabitants are unhappily ignorant of the use of Letters, and incapable of reading or writing, a situation truly lamentable !

We are informed that the Fund in England piously and generously contributed for the propogation of Christian knowledge in foreign parts, is in a great measure now unemployed,[2] from the circumstance of the United States of America having separated themselves from Great Britain. We are also informed that the Society of Jesuits is shortly to be suppressed and dissolved and their property and Estates vested in the Crown.[3] We understand that the Estates granted to the Jesuits were for the purpose of building a College and endowing it and the Revenues arising therefrom to be applied to the Education of Youth, and that before the Conquest of Canada, a very considerable number of Students were constantly educated in that College. Such being the deplorable state of this Country with respect to useful Learning, and such the ample provision made as a remedy to so great a misfortune as a state of Ignorance confessedly is— We have humbly to recommend that Application be made thro' the proper Channel for a participation of the first mentioned fund, and we humbly Trust that His Majesty out of his paternal goodness will be graciously pleased to direct that the Jesuits Estates and the Revenues thereof, may be applied to the Endowment of a College or University in this City with able professors for the Education of the Youth of all British America — — and for building and maintaining Free Schools with proper Masters for teaching the English Language, and other Branches of Education throughout this extensive Province on an approved liberal plan.

Posterity requires at our hands our Endeavour to procure them so great a Blessing, which we Supplicate both on their behalf and our own—

We have avoided making Observations on that important part of the Trade of this Province carried on with the Indians in the interior parts thereof, as the Merchants in Montreal by being particularly engaged therein, are more capable of giving the Honorable Committee information of the needful regulations, and to their report on that and other Subjects we refer.

In general, and upon the whole of the observations which we have humbly offered, may be collected, the utter impossibility of governing this Province as a British Colony

[1] During the session of 1777 an Ordinance was passed, 17 Geo. III., cap. 15, "To empower the Commissioners of the Peace to regulate the Police of the Towns of Quebec and Montreal for a limited time." The preamble declared it impossible, owing to the advanced state of the session, to form a permanent Police for these towns, hence only very general and indefinite powers were granted. Nevertheless this ordinance was simply renewed, without amendment, every two years, until 1791.

[2] Assistance from this fund was soon afterwards extended to Canada for religious purposes.

[3] The disposal of the Jesuits' Estates was a matter of much interest and discussion at this time. See note 1, p. 581.

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and promoting its prosperity without a power existing somewhere of levying inland Taxes and providing for useful regulations – – This Consideration we humbly submit to the Honorable Committee of Council, and refer them to the petition we had the Honor to transmit to His Majesty and both Houses of Parliament Two Years ago for Granting a House of Assembly to His Majesty's Faithful Subjects of this Province—[1]

A Copy whereof Accompanies this Report—

Quebec 5th January 1787.

(sign'd)

Geo : Allsop
James. Johnston
Robert. Lester.
S. Fraser.
Mathew. Lymburner.
Will : Goodall.
John : Young.

Sirs,

As a Committee appointed by the Merchants of Quebec, We have the Honour to inclose our report, agreeable to your Letter of the 15th of November last.

& are with great Respect
Sirs
your most obedient
& most humble Servants

(sign'd)

Geo : Allsopp.
James Johnston
Robert Lester
S. Fraser
Will. Goodall
John Young
Mathew Lymburner.

Quebec 6th January
1787.

The Honble F. Levesque Edwd Harrison,
John Collins George Pownall & Wm
Grant Esqrs
Committee of Council on
Commercial Affairs

COPY OF A PETITION TO HIS EXCELLENCY LORD DORCHESTER, FROM HIS MAJESTY'S NEW SUBJECTS RESIDING AT QUEBEC.[2]

A Son Excellence Le Tres Honorable Guy, Lord Dorchester Capitaine General et Gouverneur en Chef des Colonies de Quebec, Nouvelle Ecosse.—Nouvelle Brunswick, et de leurs dependances, Vice Amiral d'icelles ; Général et Commandant en Chef de toutes les troupes de Sa Majesté dans les dites Colonies, et dans l'Isle de Terre Neuve &c &c &c.

L'Humble supplique des Citoyens Canadiens de Quebec—

Qu'il plaise à Votre Excellence.

Nous Citoyens Canadiens de la Ville de Quebec, prenons la Liberté de faire à Votre Excellence nos trés humbles Representations sur un Objet qui interesse essentiellement notre tranquilité et le bonheur de cette province.

[1] See petition of Nov. 24th, 1784, sent to Britain early in 1785, p. 502.

[2] Canadian Archives, Q 27—1, p. 315. This is one of the additional papers or documents referred to at the head of the Report as underlined in red ink in the index. This petition was not submitted to the Committee, nor did it form part of their Report. It was sent directly to Lord Dorchester and by him presented to the Legislative Council, on Feb. 1st, 1787, along with the various reports and other papers. See journals of the Legislative Council, Q 27—2, p. 575.

Une juste et précise éxécution de nos loix civiles est notre Voeu, et les Alterations qu'elles ont souffertes, et qu'elles pouront encore souffrir font nos Craintes et nos peines. Ces Loix ont établi les titres de nos biens et de nos familles, au nombres de cent Vingt Mille ames, qui forment les dix neuf Vingtiéme de la population actuelle. La Capitulation, en nous maintenant expressement dans l'entière et paisible propriété et possession de nos biens, nobles et innobles, meubles et immeubles, nous a necessairement conservé ces loix civiles qui les définissent ; Et l'un des articles de l'acte de Parlement de la Quatorziéme année du regne de sa très Gracieuse Majesté, considérant avec justice ce pays comme conquis, nous a si clairement accordées qu'il ne doit y avoir dans les cours de Justice aucune doute qu'il ait sous entendu d'y introduire, en outre, d'autres loix qui n'ont Jamais été publiées en cette province, puisque leurs plus celèbres commentateurs déclarent qu'elles n'ont aucune force en Pays conquis et daja habités. Nous ne pouvons même imaginer que l'acte du Parlement qui nous accorde nos Proprietés et ces loix ait entendu Autoriser des Altérations reiterées qui detruiraient leurs principes fondamentaux, ou meler avec ces loix d'autres loix, soit génerales, soit particulières, qui ont des principes differens, et qui sont peu convenables à ce pays, dans la Vue de favoriser une certaine classe d'individus seulement; parceque du Mélange de diverses loix, en un même pays, il ne peut resulter qu'une confusion, la discussion entre les Sujets et des incertitudes ruineuse aux familles.

L'Alteration de nos loix civiles, coûtumes et usages mérite la plus grande moderation, et les precautions les plus importantes. Ces loix sont simples, claires, connües et justes, même pour le Commerce, puisqu'elles favorisent beaucoup le prompt recouvrement des dettes ; La Justice et L'Egalité entre les Créanciers. Elles consistent en Ordonnances, que les Rois n'ont voulu faire, Lorsqu'elles touchaient aux proprétés et aux droits de Citoyens, que sur les Resolutions des Etats; c'est à dire les trois ordres du peuple. Nos Coûtumes n'ont aussi été redigées par Ecrit que de cette manière, et leur redaction n'a été faite, que sur les resolutions des mêmes Etats. C'est pourquoi les lettres patentes de la derniere redaction les declarent, et garantissent expréssement comme loi et edit perpetuelles et irrevocables ; et que l'ancien Gouvernement n'a, pendant plusieurs siécles fait que peu d'ordonnances, dont aucune ne donne atteinte à ces loix—Telles sont les loix, coûtumes, et usages pour nos droits réels et personel, dont les anciens et notables, même les nouveaux Canadiens qui sont en cette province, sans distinction de naissance, ont d'accord entre Eux demandé l'exacte exécution à Sa Majesté, en la suppliant de rémedier à l'Etat actuel de cette province—

Nous Supplions donc, tres respectueusement, Votre Seigneurie, de vouloir bien ne donner aucune sanction à ce qui tendrait à détruire les principes fondamentaux des loix, coûtumes, et usages qui réglent nos Propriétés, ou qui voudraient introduire d'autres loix, attendus que toutes innovations en loix ne devraient se faire qu'avec les memes precautions qui les ont etablies

L'Ancienne et constante protection que votre Excellence a bien voulu accorder à nos droits, les plus precieux, nous assure de celle qui doublera notre reconnaissance, et nos Voeux pour votre conservation et Prosperite

Quebec le 19e Janvier
1787.

N. B. The foregoing Petition was signed by 345 Persons—

J WILLIAMS. C. C.

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(*Translation of the foregoing Petition.*)

To His Excellency the Right Honourable Guy Lord Dorchester Captain General and Governor in Chief of the Colonies of Quebec, Nova Scotia and New Brunswick and other dependencies Vice Admiral of the same; General and Commander in Chief of all His Majesty's forces in the said Colonies, and in theIsland of Newfoundland, &c, -- &c, -- &c. --

The humble Petition of the Canadian Citizens of Quebec.

May it please Your Excellency

We the Canadian Citizens of the Town of Quebec take the liberty most humbly to offer to Your Excellency our representations upon a Subject which essentially concerns our tranquility, and the Happiness of the Province

A Just and Exact Execution of our Municipal Laws, is our wish, and the Alterations they have suffer'd, and may suffer, are our apprehensions, and our afflictions.

Those Laws have established the titles of our Estates and of our Families to the number of a hundred and twenty thousand souls, who compose nineteen twentieths of the whole of the population.

The Capitulation, by expressly granting to us the full and quiet right and possession of our Estates, noble and innoble, personal and real, has necessarily preserved to us, the Municipal Laws which define them. And one of the Sections of the Statute of the 14th year of the Reign of His Most Gracious Majesty justly considering this Country a Conquered one, has so clearly allowed them to us, that the Courts of Justice ought not to entertain a Doubt that it was meant to introduce any other Laws, which have never been promulgated in this Province, for their most celebrated Commentators declare that they have no force in Countries which are Conquered and already inhabited. We cannot even conceive that the Act of Parliament which allows us our Possessions can be understood to authorise reiterated alterations, which would subvert the fundamental Principles; or to mix with those Laws, others, either General or particular, which differ in principle and are but little adapted to this Country, with an Eye to Indulge a certain class of Individuals only: Because from a Mixture of different Laws, in one and the same Country, nothing but Confusion, a Disunion among the people, and an uncertainty, destructive to families, can result. Alterations in our Municipal Laws, Customs and usages, require the greatest moderation and circumspection.

These Laws are clear, simple, well understood, and Just, even with respect to Commerce, for they greatly favour the speedy recovery of debts; they are Equitable and promote Equality among Creditors.

They consist of Ordinances, which the Sovereigns, in cases concerning property and civil rights, would not issue without the Resolves of the Estates, that is to say, the three Orders of the People. Our Customs also, were only committed to writing, in that Manner, and the digesting of them was done upon the Resolves of the same Estates. Therefore it is, that the Letters patent of the last Redaction expressly declare and ratify them as Law and Edict, perpetually and irrevocably, and that the former Government, for Ages, made but few Ordinances, not one of which struck at those Laws. Such are the Laws, Customs, and usages, in support of our Rights, real and personal, which the Elder and Chief men, and even the younger Canadians, who live here, without Distinction of birth, have agreed among ourselves to demand the exact Execution of, from His Majesty; supplicating him to apply a remedy to the present state of the Province.

We therefore most respectfully intreat your Lordship to forbear giving your sanction to anything that may conduce to subvert the fundamental principles of the Laws, Customs, and Usages, which govern our properties, or introduce other Laws; seeing that all innovations, in matter of Law, should be done with the same circumspection as obtained at their Establishment.

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The firm Protection which Your Excellency was pleased to give, heretofore, to our most precious Rights, assures it to us at present. — It will double our obligations, as it will our Prayers for your preservation and prosperity—
Quebec 19th January
1787.

The Petition was signed by 345 Persons.

J WILLIAMS C.C.

LETTER FROM THE COMMITTEE OF COUNCIL ON COMMERCE AND POLICE TO THE MERCHANTS OF MONTREAL.[1]

QUEBEC 13th November 1786.

Gentlemen,

His Excellency Lord Dochester in Council having been pleased to appoint us to be a Committee to take into Consideration and to report to His Lordship, (preparatory to the meeting of the Legislative Council which will be on the fifteenth of January next) the State of the External and Internal Commerce and the Police of the Province; with such Improvements as may be requisite to make therein,—

We have therefore to request your Sentiments with all Convenient Speed, on objects so interesting to the Province at large and to Montreal in particular.

We have the the Honor to be
Gentlemen
your most obedient
most humble Servts
(signed) FRANCIS LEVESQUE
EDWARD HARRISON
JOHN. COLLINS
GEORGE POWNALL
WILLIAM GRANT

Addressed to
Neven Sevestre
E. W. Gray
St George Dupré
James McGill
Pierre Guy
James Finlay
J. S. Goddard.
Pierre Messiere
Pierre Fortier
Hertel de Rouville
John Campbell
Edwd Southouse
Alexander Fraser
Jacques Le Moine
Benj. Frobisher.
Stephen De Lancey Esqr
& to
Messrs Jacob Jordan
Isaac Todd
Forsyth .J. Blondeau
P. Perinault
Richard Dobie
T. Chaboillez Merchants.
Mr. McBeth &
William Pollard.

[1] Canadian Archives, Q 27—1, p. 323.

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ANSWER TO THE FOREGOING LETTER.

MONTREAL 23^d November 1786—

Gentlemen,

Your Letter of the 15^th Instant was immediately communicated to the Gentlemen to whom it was addressed when we had the Honor to be appointed by them as a Committee to examine into, and report upon the objects of our Enquiries, but in matters of such high Importance to the General Welfare and Prosperity of the Province at Large, and to this District in particular, We think it a duty incumbent upon us to call in and collect the general Voice of our fellow Citizens, which we shall do without delay, aud report to you their Sentiments and ours thereon, in Time for your consideration previous to the meeting of Council the 15^th January next—

We have the Honor to be
Gentlemen
your most obedient
most humble Serv^ts

(signed)
James M^cGill.
Th. Perinault
P^re Meziere.
Jacob. Jordan.
Benjamin Frobisher
P^r Guy.

To
The Honb^le
George Pownall
Willm Grant
F. Levesque
Edwd. Harrison
John Collins

REPLY.

QUEBEC 8^th Decem^r 1786.

Gentlemen,

We duly received your Letter of the 23^rd Novem^r. We are perfectly of opinion, and certainly understood, altho' our Letter was not nominally addressed to every Gentleman in Montreal, that the Voice of the Merchants & principal Citizens should be collected on objects so interesting to the whole, as those now in Agitation.

We are happy to observe that Gentlemen of your Experience and Knowledge have been chosen as a Committee for that purpose; the sooner you can effect it and transmit your collective Sentiments the better, as the time draws near when we would wish to make up the report required of us.

We have the Honor to be
Gentlemen
your most obed^t most
Humble Servants.

(signed)
Edward Harrison
John Collins.
W^m Grant
George Pownall.

Addressed to
James M^cGill
J. Perinault
Pierre Meziere
Jacob Jordan
Benj^n Frobisher &
Pierre Guy Esq^rs
Montreal

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REPORT OF THE MERCHANTS OF MONTREAL BY THEIR COMMITTEE TO THE HONORABLE COMMITTEE OF COUNCIL ON COMMERCIAL AFFAIRS AND POLICE.[1]

"The Establishment of a Chamber of Commerce duly incorporated"[2]

Observation.

However beneficial to Trade and Commerce Institutions of this nature be considered, yet we are of opinion, that the same would prove ineffectual and inexpedient at this time; considering the connexion that subsists, more or less among the Trading People of this Place.

"Holding Terms and the Abolition of Circuits"

From the frequency of holding Courts, and from the mixture of French and English Laws, great delays, procrastinations, and Incertitude are experienced in the decision of Suits, to remedy which we are of opinion, That Terms should be established; four in the year to sit from day to day, for fourteen days each Term, which would be Sufficient, and prove more eligible for the dispatch of Business, than those Continual Courts. However for a time it might be proper to permit the Court of Common-pleas to sit once a fortnight for the decision of causes to the Amount of Ten Pounds. We are likewise of opinion, that the Circuits should be abolished. Its an itinerant Court that carries no respect— Impresses the Inhabitants with no Awe of Justice, and proves of no relief whatever to the distant Parts of the District—The end for which they were intended.[3]

"The present Establishment of Appeals in Commercial Causes"

Observation.

The same uncertainty that has hitherto prevailed in the Courts of Justice, has made its way into the Court of Appeals, probably through the disadvantage it has long labour'd under; for want of a Gentleman bred to the Science of the Law, presiding or sitting in it, to point out to the other Members, the Errors in the Proceedings if any, and to explain the Law; indeed without any Imputation on the Judges it is much to be lamented that regular Bred professional men do not preside in all the Courts of Justice in the Province, to the want of which we may impute the great delays in the Decisions of Suits, in all the Courts but more particularly in the Court of Appeals, which has proved a great and real Grievance to this District: If the Court of Kings Bench was restored to its ordinary and former Civil Jurisdiction and powers, we conceive it would remedy the evil complained of; In which case we would humbly request that the Chief Justice should hold two Terms in every year at Montreal, for the purpose of hearing and determining all Civil Suits that might be brought before him, either by Original, or on an Appeal from the Inferior Courts. This mode would prevent the great expence now attendant on Appeals to Quebec, and prove infinitely more Agreeable and satisfactory to the Suitors many of whom rather put up with the Decision of the inferior Courts, than go to the great Expence incurred by an Appeal on the present Footing.

"The Establishment of a Court of Chancery"

A Court of Chancery would be a very desirable object if it could be so constituted as to grant relief, under the legal decisions with convenient dispatch and on moderate Fees.

[1] Canadian Archives, Q 27—1, p. 326. Much the same matters are discussed as in the Report from the Quebec Committee. As in that report, there are only certain sections which relate more or less directly to constitutional matters and only these are reproduced. The portion here given begins at p. 383.

[2] The merchants of Quebec were those chiefly interested in the development of this proposal. See the "Plan for the establishment of a Chamber of Commerce for the City and District of Quebec." p. 462.

[3] See Report on Courts of Justice, p. 595.

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"On a Register of all Deeds"

Observation

Frauds having been committed by Debtors mortgaging their Lands to different Creditors, also much Inconvenience arisen to Purchasers of Lands who have no effectual means of discovering Incumbrances on them. There being likewise a considerable degree of Obscurity in most Transactions with regard to real Property : We offer as a means of better ascertaining the Rights of Proprietors, and Creditors, and avoiding Law-Suits—That there be erected at Montreal an Office for the registering all Deeds in future which affect real Property within the District.—That the Fees of such Office be moderate as possible.—That no such Deeds be valid in future unless passed by a Notary & so registered.—Considering the illiterate state of the Bulk of the Inhabitants.—That it shall be incumbent under a high penalty on the Notary who may pass any such Deed, to have the same Registered in the proper Office, and this within a short limited Time, and before he delivers any Copy to the Party.[1]

"On a Bankrupt Law"

Observation

A Bankrupt Law and equitable rules for the Distribution of the Property of Persons failing in Trade, is become essentially necessary for the security of the fair Trader, and for the prevention of those Frauds there is too much Reason to believe are daily practised. We are therefore of opinion that such Law should ascertain what Act of a Merchant amounts to an Act of Bankruptcy, & should compel the Insolvent Debtor, in that situation to a surrender of his Books, papers, and effects, on Oath for the benefit of all his Creditors, and to answer such questions to his Trustees or Creditors as they may put to him relating to his Business, In which Law, the Rights of the Wives and Children of all Persons concerned in Trade or Commerce to the real or Personal Estate of such Bankrupt should be ascertained. A Distinction should be made in the Treatment of a fraudulent, & unfortunate Bankrupt; The former should be punished exemplarily, yet not cruelly, least the End be defeated; and the latter entitled to a Discharge, provided three-fourths of his Creditors in number and value consent.

The Contradictions in the Judgements of Law on this subject mark the strongest Injury to the Commercial Interest, therefore require a speedy and effective Remedy.

Police

"The building a Goal in the District of Montreal"

There can be little doubt, that many Objects of Police, will be best provided for, by means of incorporating the Town of Montreal by Charter, But there are some, which as they concern the District at large, require to be more particularly adverted to.

The want of a proper Goal for this District, has long been complained of, and at Divers times has been represented, by different Grand Juries, as well at the Courts of Oyer & Terminer as at the inferior Courts of quarter Sessions, but hitherto no remedy has been applied. The House which at present serves for a Goal consists of four very small Rooms, in which are frequently confined promiscuously Persons of Different Sexes, and for very different Degrees of Crimes; The unfortunate Debtor cannot have a Room to himself, nor can the Malefactor when preparing for another World be accomodated with a place of retirement to deprecate the wrath of the offended Deity. The insufficiency of the Goal in point of security occasions a Guard of Soldiers to be kept in the lower part of it, and even with that precaution, many atrocious offenders have escaped, insomuch that the Sheriff of the District has refused to confine Debtors, unless the Prosecutor agreed to take upon himself the Risk of an Escape.

The Situation of this insufficient Goal heightens the Sufferings of those Persons whom the Laws dooms (sic) to an Imprisonment, offends every Passenger in the Warm Season and is a Nuisance to the Neighbourhood, being without those Conveniences requisite to carry off the Filth accumulated by want of them.

[1] See note 2, p. 616.

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We propose as the means of obtaining a proper Goal, than an Assesment be laid on the District, for the purpose of raising a Fund adequate to the building of the same, if the present Legislature is competent thereto.

"Whether or not we should apply for a Charter incorporating a select number "of Citizens, on some good and improved Plan, with Powers to make Bye Laws, decide "Civil and Criminal Causes under certain Restrictions, whether under the Stile and "Title of Recorder, Mayor, Alderman & Common Council of the City & County of "Quebec, and the Precincts & Liberties thereof, or under any other Denomination" "And a like Charter for the City of Montreal"

Observation.

The bad state of the Police in this Town calls loudly for Reform and tho' Government in its Wisdom, have attended thereto, by the Appointment of an Inspector of Police; yet we are sorry to observe that the Appointment has in no wise proven adequate to the Intent, and by Experience we find, that the exertions of the Magistrates are not sufficient to remedy the Evil complained of, We therefore beg leave to point out as the only remedy that can be applied with Effect. The incorporating by Charter a select number of the Citizens of Montreal on a good and approved Plan, with such Powers, and Priviledges, as are usually granted to Corporations; for the purpose of Police only. And we further beg leave to request, that in case the Honorable Council should approve of this mode, and Government incline to grant the same, That it be recommended to His Excellency Lord Dorchester to bestow on the Corporation such Lots of Ground and Houses, the Property of the Crown, within the Town and Suburbs of Montreal as Government have no present use for, in order to the same being applied towards the erecting Schools, work-houses, and other Establishments of Public Utility.

"That a Regulation is necessary to prevent a Greater number of Licences being granted "for the Sale of Liquors than are necessary for the use of the Town & Country."

Observation

The many Complaints arising from the great number of disorderly Public Houses call the attention of the Legislature: There is infinitely too many of them both in Town and Country; They are the bane of Industry, and only tend to Debauchery and riot, it is much to be wished that a fewer number of Licences were granted, and those to Persons of good Character only.

"A Regulation to prevent the Erection in future of Wooden Buildings or Fences within "the City of Montreal"

Observation

As the Legislature has carefully attended by a wise Law,[1] to prevent the dreadful accidents that might happen by Fire in the Towns of this Province, we must beg leave to offer an Amendment that would be of real Service, to prevent the Spreading of Fire in this Town, that is; by enacting, that no wooden fence or building of Wood of what description soever, be erected in the Town of Montreal in future under a severe Penalty.

"The Establishing of Schools and seminaries, for the Education of Youth, from those "Funds now unemployed, as well in England as in this Province, and particularly, a "respectable College in this City, with able Professors, and erecting Free Schools at "convenient Distances throughout this extensive Province, for the purpose of opening "and enlarging the human Mind, conciliating the Affections of all His Majesty's sub- "jects, and having a Tendency to render this a happy & flourishing Province."—

Observation.

There remains for us to advert to a subject which we consider as the surest and best means of obtaining a chearful and dutiful obedience to the Laws, and Government,

[1] Referring to the Ordinance of 17 Geo. III., cap. 13, "For preventing accidents by fire." This applied to Quebec, Montreal and Three Rivers.

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from subjects in general, and that is by establishing throughout the Province at proper Distances, Public-Schools for the Instruction of Youth. We hardly know of a single school in any Country Part of the District for teaching Boys, and it is to the Zeal of the few Sisters of the Congregation, that we are indebted for all the little which is taught to girls, throughout the Country. The Captains of Militia who are frequently called upon to enforce Laws and orders, are so illiterate, that not one in three can write or even Read, the Consequence is Confusion and disorder, and frequent suits and Complaints between them and the Militia-men.—It is not for us to point out the best plan for Establishing those Schools, but having understood that all the Estates which the Jesuits possess in this Country were granted to them for the Purposes of Establishing proper Seminaries, of Learning and that those Estates are likely to revert to the Crown, we humbly conceive that they could in no way be better employed, than in that for which they were originally intended and Granted. There may be further some unappropriated Funds in England for similar Purposes, now that the States of America, formerly Colonies of Great Britain are separated from her Dominion, which we would recommend to be applied for, through the proper Channel.

Upon the whole of the Observations which we have humbly offered, may be collected, the utter impossibility of promoting the Welfare of this Province as a British Colony under the present system of Government This Consideration we submit to the Honorable Committee of Council, and refer them to the Petition we had the Honour to transmit to His Majesty and both Houses of Parliament two years ago, for granting a House of Assembly to His Majestys faithful Subjects of this Province, A Copy of which Accompanies this Report.[1]

(sign'd)

Jacob Jordan.	W Boutheiller
James McGill.	Richd. Dobie.
P^{re} Guy.	Th. Perinault
Benj^{n} Frobisher.	John McKindlay
M^{le} Blondeau.	James Walker.
A. Auldjo.	Thomas McCord.

Montreal 23rd January
1787.

COPY OF A LETTER ACCOMPANYING THE ABOVE REPORT.

Montreal 23^{d} January 1787.

Gentlemen,

Having now finished our report on the objects on which you were pleased to request our sentiments, and having read the same to a numerous Assembly of old and New Subjects in both Languages without one dissenting Voice being heard; we take the earliest opportunity of transmitting the report, and shall be happy to learn that our Opinion on Subjects so interesting coincide with yours.

It would have afforded us much satisfaction, had it been in our power to hand you the Report at a more early day; the length of the report with other Business of a pressing nature, which required the Attendance of several of the Members of our Committee, will we hope apologise for the delay.

We reiterate our sense of the honor you have done us in Consulting with us on this occasion, and remain with the greatest respect

Gentlemen

Your most obedient and very humble Servants

(signed)

P Boutheilier	Jacob Jordan
Th. Perinault	James McGill
John McKindlay	P^{re} Guy.
James Walker	Benj^{n} Frobisher
Thomas McCord	M^{le} Blondeau
	A. Auldjo
	Rich^{d} Dobie.

[1] Referring to the petition of Nov. 24, 1784, to which were appended, in separate lists, the signatures of those from Quebec, Montreal and Three Rivers. See p. 502.

COPY OF AN ADDRESS TO HIS EXCELLENCY LORD DORCHESTER FROM HIS MAJESTY'S NEW SUBJECTS RESIDING AT MONTREAL.[1]

A Son Excellence Le Tres Honorable Guy Lord Dorchester, Capitaine General et Gouverneur en Chef des Colonies de Quebec, Nouvelle Ecosse, et Nouveau Brunswick, et leurs dependances ; Vice Amiral d'Icelles ; Général et Commandant en Chef de toutes les Troupes de Sa Majesté dans les dittes Colonies, et dans l'isle de Terreneuve &c &c, &c.

Qu'il plaise à Votre Excellence

Dans un tems, ou l'arrivée de Votre Seigneurie sembloit ne devoir faire penser aux anciens et Nouveaux Sujets de Sa Majesté qu'a se féliciter réciproquement de cet heureux évenement : Dans un tems où nous pensions qu'il y auroit un accord mutuel à se rejouir des douceurs d'un Gouvernement heureux : dans un tems enfin, ou nous croions la tranquilité rétablie, les Anciens Sujets revenus d'un sistême qu'un opposition générale des Loiaux
x sic Sujets Canadiens devoit leurs[x] faire regarder comme inadmissible, dans un paìs où les opposans, par droit, nombre, fortunes, et propriétés doivent emporter la balance ; C'est avec la Surprise, la plus grande, que nous voyons les nouvelles demandes des anciens sujets de Sa Majesté qui ne tendent à rien moins que boulverser les Loix fondamentalles des nouveaux, à les anéantir, et par la leurs proprietés cette commotion seroit alarmante, si les loiaux Sujets Canadiens de Sa Majesté n'etoient persuadés qu'elle a les
x MS. cut off. Vües les plus favorable(s)[x] pour son peuple Canadien ; Que lorsqu'elle verra,
x sic par l'Entermise[x] de Votre Seigneurie, au pied de son auguste trône, l'opposition générale et formelle de ses loyaux Sujets Canadiens aux demandes injustes et outrées de ses anciens sujets ; Que Quand Notre très gracieux Souverain sera instruit que tout un Peuple qui n'a jamais cessé de lui être fidel, se réunuit pour reclamer Sa Justice et Son Equité, pour lui conserver
x sic. ses Loix municipales, ses Loix, sur les queles[x] sont fondés ses biens, fortunes et proprietés ; ses Loix, que le droit des Gens assure, que la Capitulation a
x sic promise, qu' une Proclamation a solemnellement[x] ratifiée, et que le Bill émané de Son Auguste Parlement dans la Quatorziéme année de Son Regne[2] bienfaisant, a maintenu, et nous guarantit ; Que, quand sa très Digne Majesté daignera promener ses regards sur cette etenduë de paÿs qu'habite un peuple qui désire le lui conserver, et qu'ensuite elle comparera cette quantité de personnes qui lui sont si fidélement attachées, les Biens et les propriétés de tant d'invidus, dont on veut renverser les principes fondamen-
x sic. taux, avec le nombre, si petit, des anciens sujets, et de si peû[x] de proprietés, ne devons nous pas esperer, que Notre très Gracieux Souverain, bien loin d'acquiescer, à des demandes aussi injustes affirmera encore et rendra plus stables les Loix constitutionelles et municipales de ses fideles et Loyaux sujets Canadiens.

Nous Supplions Votre Excellence de vouloir bien jetter un regard sur les deux addresses[3] envoiées ci-devant pour etre mises au pieds du Trône auguste de sa Majesté, dont nous avons l'honneur de Vous transmettre les Copies ; de les Considerer comme le Voeu unanime et invariable de la nation : Et que par vôtre illustre protection Notre très Gracieux Souverain

[1] Canadian Archives, Q 27—1, p. 410. Like the petition from Quebec (see p. 619), this does not belong to the list of papers forming the Report of the Committee on Commerce and Police, but was addressed to the Governor and by him presented to the Legislative Council on Feb. 12th. See journals of the Legislative Council, Q 27—2, p. 589.

[2] The Quebec Act. See p. 401.

[3] Referring to the memorials in opposition to the petition from Quebec and Montreal in 1784. See pp. 511 and 517.

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veüille bien y avoir reférence. Nous Esperons que Votre Excellence n'aura aucun égard à ces demandes de Chambre d'Assemblée ; de Chartre d'Incorporation, dont le But est a peu près le même ; d'un Eregâtrement des Contrâts, de Gréniers et marchés publics pour les Grains &c ; d'un Commerce avec Vermont ; de ces Innovations pour les douaïres[x], Hypothéque, &c ; ces points étant assés clairement expliqués dans notre Loix : le tout ne tendant qu'a la Sapper, et nous paroissant contraire et prejudiciable à l'avantage de la province. Que toutes autres Articles de ces demandes qui ne regardent pas le Commerce seul méritent un Désaveu de notre part, comme opposés au bien, aux interêts aux droits, et aux privileges les plus sacrés des divers etats qui composent cette Province, Et à qui sans daigner les consulter, on veut imposer des Loix dont eux seuls sentiront tout le poid.

x sic

Nous osons nous flatter que Votre Seigneurie voudra bien faire valoir notre opposition par tout où besoin sera ; Qu'elle voudra bien l'appuier de son Credit : ses connoissances dans la province des sujets qui L'habitent la rendent plus capable que tout autre de faire, avec cette integrité et cette impartialité, qui en tout tems, ont characterisé Votre Excellence, un raport fidel et Exact des Vrais sentimens de notre nation ; et de pointer cette distinction que l'on doit mettre entre la futilités[x] des démandes,[x] et les droits réels des opposans. Et c'est avec la confiance la plus sincere que nous attendons encore aux marques de cette protection bienfaisante si souvent reiterée à notre Égard ; qui fait, que sous un Gouvernement cheri, Le Plus Auguste des Rois est adoré, et ne peut qu'augmenter notre amour en se faisant répresenter parmi ses loyaux Sujets Canadiens par Votre Seigneurie, pour la prosperité de laquelle nous ne cesserons de prier.

x sic

Montreal le 3me Fevrier 1787.

N. B. The Address was signed by 283 persons.

J. WILLIAMS
C. C.

(Translation of the foregoing Petition.)

To His Excellency The Right Honorable Guy Lord Dorchester, Captain General and Governor in Chief of the Colonies of Quebec, Nova Scotia and New Brunswick, and the dependencies thereof, Vice Admiral of the same ; General and Commander in Chief of all His Majesty's Forces in said Colonies, and the Island of Newfoundland &c &c &c.

May it please Your Excellency

At a period, the Epoch of Your Lordships arrival, when it might be expected that all His Majesty's subjects, indiscriminately, would felicitate each other upon account of so Happy an event: At a period, when we conceived we should mutually rejoice at the blessings of an indulgent Government : At a period, when we thought that Disturbances had ceased, and His Majesty's Antient Subjects had retracted from a System, which upon a general opposition on the part of His Majesty's faithful subjects the Canadians they should have considered as inadmissable into a Country, where the opponents in Consideration of Rights, in point of number, of Wealth and of property preponderate : It is with the greatest astonishment We hear of the new requisitions of His Majesty's Ancient Subjects ; having a tendency to nothing short of a subversion of the fundamental Laws which Govern His Majesty's new subjects, to an Annihilation of them, and by that means of their Estates. This Commotion would appear alarming indeed, if His Majesty's faithful Canadian Subjects were not fully persuaded that His Majesty looks down upon his

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Canadian people with the most benignant Eye. When His Majesty, by your Lordship's intervention, sees at the foot of his sacred Throne, the General and Specific opposition made by His Majesty's Canadian Subjects to the Unjust and strange demands of His Antient Subjects; when our most Gracious Sovereign is informed that the whole of a People who have never discontinued their fidelity to him, are uniting together to Implore His Justice and his Equity for continuing to them their common Law; a Law whereupon are founded their Estates, their Fortunes, and their Property; a Law, which the right of Nations assures to them; which the Capitulation has promised to them; which a Proclamation has Solemnly ratified; and which an Act of His Majesty's August Parliament passed in the fourteenth Year of His benign reign has affirmed and warranted to us; When His Most Gracious Majesty condescends to cast an Eye upon this extensive Country, inhabited by a people, desirous of preserving it to him, and then compares the number of persons who are so faithfully attached to him, their Estates and Possessions (whereof the fundamental principles are attempted to be subverted) with the fewness of antient subjects, and their so little Property; Have we not to hope that our Most Gracious Sovereign will further strengthen, and render still more durable the constitutional and Municipal Laws of his faithfull & Loyal Subjects of Canada?

We request Your Lordship's Attention to the two Addresses heretofore sent to be presented at the foot of His Majestys sacred throne, Whereof we have the Honour to transmit Copies to you; to consider them as the unanimous and immutable wish of this Nation and by your Noble Interposition, that our Most Gracious Sovereign will deign to refer to them.

We hope Your Excellency will disregard those Demands of a House of Assembly, a Charter of Incorporation (whereof the design tends nearly to the same end) a Registry of Deeds, store houses, Public Markets for Corn, &c; of a Commerce with Vermont, of Innovations with regard to Dower, Hypothecations &c; These points are clearly enough explained in our own Law: all which only tends to strike at the foundation of it, and appearing to us repugnant and hurtful to the Interests of the province. Every other Article of those Demands which does not relate to Commerce *alone*, merits a disavowal on our part, as being contrary to the Welfare, the Interests, the Rights and Priviledges (the most sacred) of the different Estates whereof this Province is composed; and for whom, without condescending to consult them, Laws are to be imposed, the burthen of which will fall on them *only*.

We presume to flatter ourselves that Your Lordship will improve our opposition wherever it shall be found necessary; that you will support it with all your Influence. Your Knowledge of the People of this province, enables Your Lordship, preferably to all others, to draw up a faithful and exact Report (with that integrity and impartiality which have, at all times Characterised Your Excellency) of the true Sentiments of our Nation; and to point out that distinction which ought to be observed between the futility of the demand, and the real Rights of the Opponents.

It is with the sincerest Confidence, we again look up for instances of that beneficient protection so often reiterated in our behalf, which occasions, that, under an admirable Government, the most August of Kings is adored; and it cannot fail of enhancing our love for him, in permitting himself to be represented among his Loyal subjects of Canada, in the Person of Your Lordship; for whose Happiness we shall not cease to pray

Montreal 3rd February
1787.

The Address was signed by 283 Persons.

J WILLIAMS
C. C.

[1] Canadian Archives, Q 27—1, p. 440.

SESSIONAL PAPER No. 18

LETTER, ADDRESSED TO THE MAGISTRATES OF QUEBEC, FROM THE COMMITTEE OF COUNCIL FOR COMMERCE AND *Police*.[1]

Quebec 13th November 1786.

Gentlemen

His Excellency Lord Dorchester in Council having been pleased to appoint us to be a Committee to take into consideration and to report to His Lordship (preparatory to the meeting of the Legislative Council, which will be on the fifteenth day of January next) the state of the Police of the Province with such improvements as may be necessary to make therein.

We have therefore to request your sentiments with all convenient Speed, on objects so interesting to the Province at large, and to Quebec in particular,

We have the Honor to be
Gentlemen
Your most obedient most Hble Servts

(sign'd) Francis Levesque, Edward Harrison, John Collins., George Pownall, William Grant

Addressed to
Nicholas Cox
J. Tachereau
Pierre Panet
J. Williams.
Thos Scott.
Peter Stuart
Malcolm Fraser
Jno. Coffin
Jno. Renaud
Nath1 Taylor
T. Aylwin
F. Duschenay &
Alexr Fraser Esqrs
Quebec.

Q. 27-I. p. 440.

LETTER FROM THE MAGISTRATES OF QUEBEC TO THE COMMITTEE OF COUNCIL FOR COMMERCE AND POLICE IN ANSWER TO THE FOREGOING LETTER.[1]

Quebec 20th December 1786.

Gentlemen

In compliance with your request to the Magistrates signified in your Letter of the 15th Ulto, We now lay before you what has occured x unto us as requisite for the improvement of the Police, establishing good order, and promoting the general good of the community. (x sic)

1st That an Extension of the Jurisdiction of Justices of the Peace, in certain instances, would render that Office of greater public utility Vizt—By impowering them To convict on their own view persons offending against the Royal Ordinance, and against the

Regulations of the Police of the City of Quebec, and these Regulations to extend to the Banlieu or precincts of the City.

To determine in a summary way all Disputes between

Habitant and Habitant, concerning Fences, Ditches, Water Courses, Damages done by Cattle, Horses, Hogs &c breaking into Inclosures—Imposing a small fine over and above the real Damage done.

[1] Canadian Archives, Q 27—1, p. 441.

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To settle in a summary way small Debts not exceeding Forty shillings value.

To settle the Assize of Bread at such times and as often as they may think necessary for the Benefit of the public.

To confine all Beggars asking Alms, or Vagrants Idly strolling without a Licence either in the Town or Country.

To visit all Protestant Schools once every three Months.

2—That a House of Correction, a Work House and an Alms-House, be provided in the City of Quebec.

3—That every Parish be obliged to maintain its own Poor, and that a Person or Persons in each Parish be authorized and impowered to remove interloping Paupers to the Parish where they were, either born or had last gained a Settlement, so that no Parish may be burdened with more than its own Poor.

4—That no Parish Priest, Curate, or other Person, give Licence to any poor person to ask Alms without the limits of their own Parish.

5—That so much of the present Ordinance[1] respecting the Covering of Houses with Shingles, as limits the time of Prosecution for the Offence to Ten days,—be repealed.

6—That the pretended Ancient Usage in Canada, called the Abandon, whereby on the 29th of September annually person's[x] claim a right of pulling down fences, and opening inclosures, as it tends greatly to the Injury of the Farmer, where the Inclosures are laid open, and to the great discouragement of industrious Agriculture, be strictly prohibited by Law.

x sic.

7—That the ancient Law of the Country, prohibiting the subdivision of Farms[2] be revived by an Act of the Legislature and Rules established for the clearing of Fields of Thistles and other noxious Weeds.

8—That all Sportsmen, Idle persons, and those who walk or ride into the Country, be prohibited from passing over Fences, and through Fields of Grass or Corn, or removing Rails or Pickets to gain an Entrance.

9—That the Roads to certain distances around the City of Quebec be repaired and kept in good order by the joint Labour of the Inhabitants of the City and the Inhabitants of the Parishes within the prescribed Limits

10—That Bridges be built over the River St. Charles and other small rivers on the Public roads, more Especially the River St. Charles, for the great convenience of both City and Country around from whence a great part of the supplies to the City are Brought. The Inhabitants of the Country Parishes frequently lose much time in waiting for a suitable time of the Tide to cross that River, in its present state without a bridge.

11. That for the better forming and keeping in good order the Public Roads in Winter, the use of Traineaux be prohibited, and Trains only permitted, and these to be constructed with Runners not exceeding four Inches in height, the length to be six and a half feet, and the breadth Two feet eight Inches to be shod with a strip of Iron lengthways in the middle of the bottom.

12—That some fund be established, or Money appropriated for the payment of Bailiffs and Constables, without which Justice cannot be by the Magistrates duly administered, as daily experience evinces.

13—That a substantial Prison be provided for the District of Quebec, and to contain a sufficient number of Apartments[x] to keep Prisoners separate from each other.

x sic.

[1] Referring to the Ordinance of 17 Geo. III., cap. 13, "For preventing accidents by fire."

[2] Referring to the Ordinance of Louis XV. of 26th April, 1745: "Ordonnance du Roi, portant entr' autres choses défenses aux habitans de bâtir sur les terres, à moins qu'elles ne soient d'un arpent et demi de front sur trente à quarante de profondeur." See Edits, Ordonnances Royaux, Déclarations et Arrêts du Conseil d'Etat du Roi Concernant Le Canada. Quebec, 1854: Vol. I., p. 585.

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14—That Provision be made for the safe Custody of Criminals, Vagabonds, Rogues, Vagrants &ca in Parishes distant from the Capital, and the Public Prison for the District.

15—That an Act be passed by the Legislature respecting Bastard Children; and Apprentices; better adapted to the circumstances of this Province than are the acts of Parliament now in use

16—That no Person be allowed to practise Physic or Surgery within this Province without producing Testimony of his having been regularly educated in these Professions and without being duly licens'd by authority

17—That the Fees of these Physicians and Surgeons who may be authorised to practice be regulated by the Legislature; The high charges of the Physicans (it is asserted) have deterred many persons—more especially the poor Inhabitants in the Country from applying for relief, even in cases of necessity, whereby it is very probable many lives are annually lost.

18—That the Inhabitants of Quebec be impowered to provide means for paving and Lighting the Streets of the City

19—That public Schools for educating youth be established throughout the Province.

These Articles are very respectfully submitted to your Judicious consideration by;

Gentlemen
your most obedient
and
most humble Servants
(signed) Jno Coffin.
Thos Scott
Malcolm Fraser
Peter Stuart
Juchereau Duchesnay
John Renaud
Thos Aylwin.
Nathl Taylor.

To the Honourable
John Collins.
Edward Harrison
Francis Levesque
George Pownall
and
William Grant
Esquires

LETTER, ADDRESSED TO THE MERCHANTS AT THREE RIVERS, FROM THE COMMITTEE OF COUNCIL FOR COMMERCE AND POLICE.[1]

QUEBEC 13th November 1786.

Letter similar to the one addressed to the *Magistrates* of *Quebec*, with same Signatures at page *440*.[2]

Addressed to
Tonnancour Esqr
Aaron Hart.
Samuel Sills
Bellefeuille Esqr
La framboise
&
Malcolm Fraser
Three Rivers

[1] Canadian Archives, Q 27—1, p. 447.

[2] Page 440 in Q 27—1; p. 630 in this volume.

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AN ANSWER TO THE FOREGOING LETTER.[1]

Three Rivers 28th Decem^r 1786.

In consequence of the Minutes of the Proceedings of the Quebec Merchants, We the subscribers at a late Meeting have consider'd of the following objects ; on those subjects of the Internal and external Commerce and Police of the Province in general, and Three Rivers in particular, and which are universally necessary

1st That Foreign Molasses should not be imported unless subject to such Duty as will bring it to an equal value of Molasses imported from the British Islands.

2nd The importation of Wine and Fruit directly from Spain and Portugal under certain restrictions and rules.

3rd Bounty on Exports including Pot and Pearl Ash.

4th The improvement of the Fisheries.

5. The improvement of the Wheat & Flour Trade, and establishing Public Markets.

6th The Improvement of the Navigation of the River.

7th The Recovery of Debts on the Principles of the English Commercial Laws, Speedy processes and additional Laws for the recovery of Small Debts, which is much wanted at this Place as well as a better Police ; the present system being found no ways beneficial to Trade, here being no means for the recovery of Small Debts but by waiting the Arrival of the Circular Courts twice p^r year, which Courts sitting sometimes at Machiche and sometimes here, have often been attended with many abuses, as well as total losses. The Establishment therefore of a Weekly Court at this place, for the recovery of Small debts would be of a general benefit.

8th The Establishment of Appeals and a Court of Chancery.

9th Registering of all Deeds and Mortgages, and to prevent frauds on Mortgages, and that the original Deeds and Mortgages should be left in the Hands of the Proprietors and not left in the possession of the Notaries

10th Some regulation of Law for Bankrupts, to prevent Frauds.

11th That a standard should be fixed for Weights & Measures in the Province.

12th Bringing all Gold Coins to one certain Weight.

13th A Tax on all Goods sold at Vendue ; Furrs and Goods sold by execution excepted

14th A Charter for incorporating a select number of Citizens to make Bye Laws, authorised to Commit Felons, and decide Civil and Criminal Causes, under certain Rules & Restrictions (without the trouble of a Journey to Montreal) and whose power should extend as was formerly done from St. Anne to Berthier on this side, and from St. Pierre to Masqua on the south shore, also with full power to regulate the Police

15th The Establishment of Public Schools we think highly necessary, and that Three Rivers is a very proper Spot for an Establishment of that Kind.

(sign'd) Aaron Hart
Sam^l Sills
Malcolm Fraser ^x
J. La frambois.

x sic

A REPRESENTATION BY MANY OF HIS MAJESTY'S NEW SUBJECTS AT THREE RIVERS TO HIS EXCELLENCY, AND THE COUNCIL, VIZ.[2]

A son Excellence, Lord Guy Dorchester Chévalier du trés honorable ordre du Bain, Gouvernour Général et Commandant en Chef de la province de Québec &c &c &c &c
Et à son trés honorable Conseil.

Monseigneur

Nous Les habitans de la ville des trois Rivières, faisant tant pour nous, que pour les habitans des differentes paroisses qui formoient ci devant son gouvernement; prenons La Liberté de Répresenter trés humblement a Votre

[1] Q 27-1, p. 448.
[2] Canadian Archives, Q 27-1, p. 451.

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x sic Seigneurie et à vôtre hônorable ^x^ Conseil, que nous avons ête ^x^ informé que
x sic six personnes de cette ville avoient étés ^x^ nommées pour former un Comité,
à L'effet de representer L'etat actuel de ce Gouvernement et ce qui seroit
nécessaire pour son bien être futur Nous avons appris que ces Messieurs,
avoient Envoyés Leur réponce.[1] Et comme leur procédée ne nous ont point
x sic êtés ^x^ communiques et que les habitans de cette ville n'ont êtés appelés ni
consultés, nous ignorons si les Vrais intentions du peuple ont eté répre-
x sic senter.^x^

C'est pour quoi nous supplions Votre Seigneurie et Votre hônorable
Conseil, de nous permettre de faire les representations qui suivent.

De tous tems il y a êu en cette Ville une Cour Civile & Criminelle;
x sic nous en avons etés déchus par L'ordonnance de 1770.[2] qui etablis ^x^ La Cour
de tournée. depuis cet Epoque, que de pertes n'ont pas Soufferts les habi-
tans de ce gouvernement ayant êtés obligés d'aller defendre Leurs droits à
trente lieus d'un Coté et d'autre, et de porter Leur argent aux deux Ex-
tremités de La province, de façon que ce gouvernement qui en est Le Centre
se trouve Ruiné, ce qui a fait tomber le commerce et Découragé L'Agricul-
ture et tous les Arts.

Nous sommes cependant persuadés, que L'intention de votre Seigneurie,
fut en Erigeant La Cour de tournée, d'operer en nôtre faveur, comme en
faveur du reste des sujets de La province, une diminution sur les frais Ju-
diciaires et celérité dans le Jugement de nos causes; mais nous allons
Démontrer a Votre Seigneurie et à Votre honorable Conseil, que Loin
d'eprouver ces Effets avantageux, nous en avons eprouvés de tous opposés.
car d'un Côté les Causes que nous avons êtés obliges de porter—mouvoir à
Montreal, ou à Quebec, entre le tems pour s'y rendre, et Le sejour souvent
infructeux, que nous ne pouvions nous dispenser d'y faire; Notre dépence
particuliere à la vie—Le Cout de nos temoins, celui des Significations et les
Emolumens des practiciens nécessairement reiterés au moindre incident ou
x sic a chaque nouvelle motion, nous ont ruinées^x^ en partie et nous ont obligés au
sacrifice douleureux de nos Biens et de nos droits.

Nous n'avons pas été plus heureux sur l'effet de la Cour de tournée
Erigée par L'Ordonnance, Car les Causes de sa competence, quoi que de
modiques pretentions, N'etans pas moins susceptible de faits contestés
preuves et incidens que celles de la compétence des Cours de Quebec &
Montreal, étoient rarement jugées à leur premiere motion, de maniere que
Leur Remise aux tournées futurs ^x^ etoit un inconvenient d'autant plus dis-
x sic gracieux q'indépendamment de la perte presque certaine des frais primitifs,
il arrivoit souvent que le debiteur Dévenoit ou Decedoit insolvable, ou
qu'encouragé par le laps de tems, se fortifioit dans la mauvaise foy ou
Changeoit de demeure et emportoit avec lui Le Bien d'un Légitime Creancier.

Nous n'avons pâs ^x^ eu plus de bonheur dans les affaires qui concernent
x sic La paix, car Messieurs les Commissaires de cette endroit n'ont que le pou-
voir de donner des prises de Corps, et de faire conduire Les Malfaiteurs soit
dans les prisons de Quebec ou de Montreal, fautes de cautions; Et la partie
offencée est obligée d'aller plaider dans l'une ou L'autre de ses deux Cours,
et d'y mener ses temoins, ce qui fait des frais immenses, dont La partie
offençeante est souvent hors d'etat de payer, de facon que la partie offencée
pert ses Avances et les frais de ses temoins, ou bien il faut Laisser tomber
L'Affaire. Ce qui est souvent arrivé dans cet endroit.

Pour Remedier a tant de inconveniens, nous supplions Votre Seigneurie
et Votre honorable Conseil, de nous accorder Les tres humbles Démandes
x sic Cy appres ^x^ Expliquées.

1^r^ Que le gouvernement des trois Rivieres soit divisé comme il L'etoit cy
devant, c'est a dire du Coté du Nord, depuis et Compris St. Anne, jusques

[1] See p. 633.
[2] For the Ordinance of 1770, see p. 280.

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et Compris L'Ormiere; et du Coté du Sud depuis et Compris S[t] Pierre Le bequet Jusques et Compris Yamaska.

2. Une Cour Civile Etabli en cette ville, autorisée à prendre Connoissance des Matieres de nos proprietés, et Matières de Dettes. Les Jugemens de Laquelle Cour Ressortiront (au Cas d'Apels) pardevant Votre seigneurie et votre honorable Conseil.

x sic 3. Une prison Civile pour arreter tous Malfaiteurs. Cette prison étânt[x] dans le centre de La Province il ne pourroit en Resulter que de tres bons Effets pour les deux autres Gouvernemens; Car les gens qui Desertent de x sic chès [x] Leurs [x] maitre, qui vols [x] ou qui font d'autres crimes doivent necessairement passer dans cet endroit, soit en montant ou descendant. Sans celà personne n'est pressée de les arreter pour Les conduire soit dans les prisons de Quebec ou Montreal.

Et que Son Honneur, le Juge en Chef de cette province, jugea Les prisonniers qui se trouveroient detenus dans la dite prison, Lorsqu'il iroit tenir La Cour du Banc du Roy à Montreal.

4. Un nombre sufisant de Commissaires à paix pour tenir une Cour de session de quartier, afin de terminer les affaires D'Assaut et Batailles, sans etre obligé d'aller à Quebec ou à Montreal, ce qui occasionne des frais conx sic siderable [x] comme nous l'avons remarqué ci devant, avec pouvoirs de faire des Réglemens pour La bon ordre et La Police tant dans La Ville que dans le Gouvernement des trois Rivieres, et qu'ils ayent le pouvoir d'infliger des amendes à ceux qui contreviendront aux dit Reglemens. Cette partie ayant été negligée depuis L'ordonnance de 1770. fait que chacun est Maitre et fait ce qu'il veut ne craignant aucune punition, à moins d'aller chercher Justice à Quebec ou à Montreal, aux quels endroits alors, les choses ne se resemblent plus, comme si l'on en prenoit Connoissance sur le lieux, chacun Rapportant ce qui est à Son avantage, vrai ou faux.

5. Un Marché public dans la Ville des trois Rivieres et que les habitans du gouvernement soyent obligés d'y apporter leurs denrées, pour empecher x sic le monopole que beaucoup de personnes exercent, en acheptant les denrés [x] et les Revendant au Dessus d'un honnête Benefice.

6. Un Commissaire de police, qui aura L'inspection du Marché, des poids et Mesure dont on y fera Usage, des Rües et autres Nécessités suivant l'exigence des cas et principalement de faire observer Les Ordonnances de cette province.

x sic 7. Que le Commerce de la Rivieres [x] S[t] Maurice, soit libre aux Commerceans de cette endroit seulment, à l'exclusion de tous autres; attendu que c'est le seul endroit d'ou l'on tire des Pelleteries dans ce gouvernement, et qui en fait La principale Branche de commerce. Messieurs Les Negotians de Québec et Montréal, ayant des Postes beaucoup plus avantageux pour faire la traitte.

8. Une Ecole publique, sur le meme pied et avec les memes privilegis et prerogatives qua celles qui seront Etablie à Quebec et à Montreal.

Enfin La Protection de votre Seigneurie et de son honorable Conseil, dans tous cas imprévus. Par tous ces moyens nous esperons voir refleurir dans notre gouvernement, Le commerce, L'Agriculture et tous les arts en général.

x sic Nous terminons nos respectueuse[x] demandes par L'incontestable. preuve que l'Administration d'une Justice accessible, prochaine, et Relative aux Moeurs, Coutumes et usages des Lieux, inspire aux peuples qui les habitent, L'amour, La Vénération, L'obeissance et le dévouement pour x sic leurs[x] prince, dévoirs[x] à jamais inseparable[x] par les Suplians, qui prevenus x sic des bontés de votre seignurie, [x] ainsi que de L'esprit de sagesse de votre honorable Conseil en esperent L'acceuil à leur Requête

Le Ch[trs] Niverville, Montisambert,

Godefroy de Normanville. Godefroy de Tonnancour

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droit richerville, L. J. Le Proust. fils.
Thom^s Prendergast. John Morris
John Macpherson. J. Bat^e
Louis Labadie, Tonnancour.
J : Baptiste Corbin, L Debarats
Jean Bolvin, Laguerche. fils.
francois Clesse, Joseph D'Enoy
x sic pro Douset Le Ch^veu Tonnancour, Jean Dvuse^x
Charles x Letourneau. Joseph x Bolvin.
pierre x Panneton. Joseph x Richard.
Jean x Blondin. Charles x Lonval
F. B^te x Blondin. F. B^te x Pineau.
J. B^te x Duplacy. J. B^te x Panneton
Firmin x Comô. Joseph x Gatant
J. B^te x Harnois Joseph x Bourbeau.
P^re BaBy Badeaux
Jean Soulard.

Nous Commissaires à paix, et Notaires sousignés Certifions que les noms ci dessus et de l'autre part ont êtés signés en notre présence et d'un consentement unanime. Enfoi de quoi aux trois Rivieres

Le 28. Decembre 1786

Badeaux J P
No^re Le Ch^vr Niverville

(*Translation.*)

A Representation by many of His Majesty's new subjects at Three Rivers to his Excellency, and the Council, viz.

To His Excellency, Lord Guy Dorchester, Knight of the most honourable Order of the Bath, Governor General and Commander in Chief of the Province of Quebec &^c &^c &^c &^c and to his most Honourable Council.

My Lord,

We, the inhabitants of the town of Three Rivers, acting in our own interests, as well as in those of the inhabitants of the different parishes which formerly belonged to its Government take the liberty of most humbly representing to Your Lordship and to your honourable Council, that we have been informed that six persons of this town have been chosen to form a Committee, for the purpose of setting forth the actual condition of this Government and what would be necessary for its future wellbeing. We have heard that these gentlemen have sent in their statement. And as their proceedings have not been communicated to us, and the inhabitants of this town have not been called, or consulted, we are ignorant whether the real wishes of the people have been represented.

We therefore entreat your Lordship and Your Honourable Council to permit us to make the following observations

There has been from all time in this Town, a Civil and Criminal Court; we were dispossessed of this by the ordinance of 1770, which established the Circuit Court. Since this epoch, what losses have been sustained by the inhabitants of this jurisdiction who have been compelled to go a distance of thirty leagues in one direction and another to defend their rights, and have had to carry their money to the two ends of the Province, so that the government which is its central point has been destroyed, to the detriment of Commerce, and the Discouragement of Agriculture and all the Arts.

We are persuaded however, that Your Lordship's intention in establi-hing the Circuit Court, was to bring about, for our benefit, as well as for that of the other subjects in the Province, a diminution of legal expenses, and dispatch in the settlement of our lawsuits; but we shall prove to Your Lordship and to Your Honourable Council,

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that far from experiencing these beneficial results, we have experienced the opposite in every case. For on the one hand, the causes which we have been obliged to transfer to Montreal, or to Quebec, have, between the time consumed in travelling, the often useless sojourn which we could not avoid making in these places, the expenses incident to our life there, the cost of our witnesses and of the legal notices, and the fees of the lawyers, which were necessarily repeated for the smallest reason, or on each fresh motion,—partly ruined us, and forced us to the painful sacrifice of our possessions and our rights.

We have not been any more fortunate in the results of the Circuit Court established by the Ordinance. For the causes within its cognizance, although of moderate importance, being as much affected by disputed points, proofs, and incidents as those within the cognizance of the Courts of Quebec and Montreal, were rarely judged on their first motion, and their consequent postponement to future circuits was an inconvenience all the more unfortunate, because independently of the almost certain loss of the first costs, it often happened that the debtor, either became or died insolvent, or else, encouraged by the lapse of time, was confirmed in his dishonesty, or changed his residence, and carried away with him the property of a legitimate creditor.

We have not been more fortunate in matters which concern the public peace, for the Commissioners have only power to issue writs, and, in default of bail, to have malefactors taken to prison either in Quebec or Montreal. And the offended party is compelled to go and plead in one or other of these two courts, and to take his witnesses there, thus causing immense expense, which the offending party is often unable to pay, so that the offended party loses his advance money and the cost of his witnesses, or else he is obliged to let the matter drop. The latter often happens in this place.

For the remedying of so many evils, we entreat Your Lordship and Your Honourable Council, to grant us the most humble petitions hereafter set forth

1st That the Government of Three Rivers be divided as it was heretofore, that is to say on the north side from St. Anne, inclusive, to L'Ormière inclusive; and on the south side from St. Pierre le Bequet inclusive to Yamaska inclusive.

2. That a Civil Court be established in this town, authorized to take Cognizance of matters concerning our properties, and matters concerning debts. The judgments of which Court shall (in case of Appeal) come before Your Lordship and Your Honourable Council.

3. A civil prison for the detention of all malefactors. As this prison would be in the centre of the Province, only good results could follow for the two other governments; For people who desert from their masters, who steal, or commit other crimes must necessarily pass through this place either in going or coming. Without this prison, no one would be in a hurry to arrest them to take them to the prisons either of Quebec or Montreal.

And that His Honour, the Chief Judge of this Province shall judge the prisoners who shall be found confined in the said prison, when he goes to hold the Court of King's Bench at Montreal

4. A sufficient number of Commissioners of the Peace to hold a Quarterly Court of Session, in order to conclude affairs of Assault and Battery, without being obliged to go to Quebec, or to Montreal, which occasions considerable expense, as we have before remarked, with powers to make Regulations for good order, and for the police, both in the Town and in the Government of Three Rivers, and with power to impose fines on those who shall infringe the said Regulations. This point having been neglected since the Ordinance of 1770, it follows, that everyone is his own master, and does what he chooses, without any fear of punishment, unless justice is sought either in Quebec, or Montreal, in which places, matters have no longer the same appearance, as they would have, if Cognizance were taken of them on the spot, for everyone gives witness to his own profit, whether true or false

5. A public Market in the Town of Three Rivers, to which the inhabitants of that government shall be compelled to carry their wares, to prevent the monopoly which many persons appropriate, by accepting the wares, and selling them again at more than a fair profit.

6. A Police Commissioner, who shall have the inspection of the Market, of the weights and measures which shall be used there, of the thoroughfares, and other necessities according to the exigencies of the case, and who shall especially enforce the observance of the Ordinances of this province.

7. That the Trade of River St Maurice shall be free to the Tradespeople of this place only, to the exclusion of all others; seeing that it is the only place in this Province from which furs are procured, and this is the principal branch of commerce. The Merchants of Quebec, and Montreal have much more desirable stations where they can make their bargains

8. A public School, on the same footing and with the same privileges aud rights as those which shall be established in Quebec and Montreal

And lastly the Protection of Your Lordship and of his Honourable Council in all unforeseen cases. We trust by all these measures to see Our Government, Commerce Agriculture, and all the arts in general flourish once more.

We close our respectful petitions with the indisputable assertion that the Administration of a Justice which shall be Accessible, ready to hand, and in proper relation to the manners, customs and usages of the places Governed, will inspire the people who inhabit them with Love, Veneration, Obedience and Devotion to their Prince, duties which are forever inseparable from Your Petitioners who anticipating Your Lordship's Favours, and the spirit of wisdom of Your Honourable Council, hope from the same, the favourable reception of their requests.

* * * * * *

We the Commissioners of the Peace, and Notaries undersigned, certify that the names written above and on the other side, have been signed in our presence, and by mutual consent. In witness whereof at Three Rivers

the 26th December 1786.

D.

REPORT OF THE COMMITTEE OF THE COUNCIL UPON POPULATION, AGRICULTURE AND THE SETTLEMENT OF THE CROWN LANDS.[1]

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REPORT OF THE COMMITTEE.[2]

To His Excellency The Right Honorable Guy, Lord Dorchester, Captain General and Governor in Chief of the Province of Quebec &ca &ca &ca.

May it Please Your Excellency,

Whereas Your Excellency by your order in Council of the 6th of November last, was pleased to appoint us a Committee, for taking into consideration the several Objects

[1] Canadian Archives, Q 27-2, p. 497. The members appointed to this Committee were Messrs. De Lery, De Longueüil, Holland, Davidson, Boucherville, and Sir John Johnson. See p. 591. The index will indicate the subjects covered by this Report, but, as in the case of the other reports, only those portions relating to the system of law or government of the Province are here reproduced. The pages given to the left of the index refer to the copy in the Canadian Archives; those given in brackets to the right of the titles refer to this volume.

[2] Canadian Archives, Q 27-2, p. 499.

of Population, Agriculture and the Settlement of the Kings Lands; and to direct, that we should report thereupon with all Convenient Dispatch.

In humble Obedience to your Commands We have the Honor to report, that we have considered attentively, and by our Inquiries have collected some useful information upon, the several Objects recommended to us; The Result of which we lay before Your Excellency under their Different heads.

First With regard to Population

We conceive that the most necessary and effectual mean, both of preserving the Lives of His Majesty's subjects, and advancing Population, is that of regulating Systematically the practice of Physic, Surgery and Midwifery throught the Province.—The reflections[d] of Mr. James Fisher, Surgeon to the Garrison of Quebec, marked N° 4 and those[b] of Mr. Charles Blake, Surgeon at Montreal N° 11 seem to merit the Attention of the Legislature; inasmuch, at least as they point out a mode by which an object so important to the State, and so interesting to humanity, may be promoted.

d. See Page 524 to 533

b Page 534 to 538

To these therefore, as well as to the Papers marked—Nos 1. 2. 5. 7. 8. 9 & 10 We beg leave to refer your Excellency.

Secondly Concerning Agriculture.

It is apprehended that nothing can more effectually Animate the Canadian Farmers to the Advancement of Agriculture than the Revival of the Antient Laws and Usages of the province.

They are briefly recited in the said Paper. No. 1. Article 25.

And

Thirdly. With respect to the Settlement of the Kings Lands.

We have searched the Council Office for the Applications or Petitions for Lands, remaining of record there; and We have caused a List of them to be made out, to which we refer, marked N° 18.

The Loyalists, who have settled themselves above Montreal have transmitted to us certain Papers marked N° 13[c] & 14[d], in which they intimate their wishes and Desires, that the Lands on which they are settled, should be granted to them under a different Tenure from that Signified in His Majestys Instructions.[1] But we are of opinion that the terms and Conditions specified in the Instructions are fit to be adopted.

c. Page 510 to 518

d Page 519 to 521

We humbly submit these matters to Your Lordships superior Wisdom; and we have the Honour to be, with profound respect

Your Lordships most obedient and most humble Servants

(Signed) J. G. C. DeLery
Longueüil
Samuel Holland
Boucherville
John Johnson.

Committee Chamber }
20th January 1787 }

At the Committee Chamber the 13th of February 1787.

Your Excellency having been pleased to refer back to us the foregoing Report in order that Sir John Johnson's Dissent from a part thereof (Which Dissent Accompanied the Report, but wherein no Express Reference was made to such Dissent as making part of it) We have in Addition to the above humbly to report to your Lordship that the said Dissent was intended, and is now declared by us to be a part of our said Report.

(signed) J. S. De Lery
Longueüil
Samuel Holland.
Boucherville
John Johnson.

[1] See p. 295.

Dissent [1]

Sir John Johnson does not concur in Article the 3rd of the foregoing report, but offers the following Paper as expressing his Sentiments upon the Subject of the Reference.

That—His Majestys Instructions to His Excellency Lord Dorchester for granting the Crown Lands, which has been under the Contemplation of the Committee, and upon which the report is principally grounded appears to be the same, as that made to the Governor of this Province in the year 1774.[2]

That—Since that Period, the Rebellion, War, & Peace have produced an important change in the situation of this Province, and which will claim and merit His Majesty's Consideration, A Change that in Policy, and Justice may prevail with His Majesty, to alter the said Royal Instructions, and grant the Crown Lands, in a manner different, from that recommended by the report of the Committee.

That—Soon after the Commencement of the Rebellion in 1776 the Loyalty and Attachment of several Thousands of his Majestys faithful Subjects called them forth to take up Arms, and to a steady Exertion in Support of the Laws, and Government of Great Britain, and by that Loyal exertion, to protect and secure the Property, and Estates which they held under the Crown in the different Provinces.

That—By the Treaty of Peace in 1783,[3] His Majesty was pleased to declare the Colonies in Rebellion Free and Independent States, whereby the Kings Loyal Subjects so under Arms, and others in constant Exertions to protect, defend and support the Laws and Government of Great Britain, lost their Lands and Estates, which by the Peace fell to the Power and Possession of the United States. Those Lands and Estates afforded them a Competent Comfort, and Support to their Families, They were held in free and common Soccage, and possessed under those Laws, and that Government, the best calculated, to protect the Person, and Property of the subject, and render him the most Loyal and Happy.

That—Many thousands of His Majestys Loyal Subjects (whose Estates were seized and Confiscated) have remained in this Province in the confident hopes that his Majesty in his royal wisdom and Grace would be pleased to grant to them Lands, upon the same Tenure and under the benefits, as those they formerly held of the Crown and similar to the Grants and Estates, his Majesty has been graciously pleased to grant, and secure to other suffering subjects who have resorted to his Majesty's Neighbouring provinces of Nova Scotia, & New Brunswick. That these his Majesty's distressed Subjects by protection of the Crown, and the Laws, to which they had been accustomed, and were attached, might be restored in a great degree, and their Children wholly, to that happiness, and those blessings, they fully experienced under the British Government prior to the Rebellion.

That—They have had every reason to be thankful for his Majesty's Paternal Care, and the Bounty and Liberality of the Nation, but that the hopes and Confidence, of those Suffering Loyalists are, that they may hold Lands of the Crown, in free and Common Soccage, and not *en roture* as the Vassalls or *Censitaires* of a Seigniors.

That—Such Tenures are contrary to the Growth of a Commercial, English Colony, are adverse to Agriculture, must impede the Population of the Province, and are Tenures not the most advantageous to the Policy and Interest of the Nation.

That If the Lands upon which such Loyalists have already been settled in this Province, could not be retained but *en roture* as feudal Vassalls, it is more than probable, that many of the Settlements already made would be abandoned and those, His Majesty's faithful Subjects driven to seek a refuge and support in some other situation, whereas by granting those Lands in the manner which all other Crown lands are

[1] See Q 27-2, p. 502.

[2] In the Instructions to Carleton, drawn up in the end of 1774 and sent to him in the beginning of 1775, article 38 referred to the tenure under which new grants of land were to be made. See p. 429. This article simply followed the additional Instruction of 1771 re-establishing the French feudal tenure. See p. 295. The 38th article of the Instructions of 1775 was reproduced without alteration as the 39th article of the Instructions to Lord Dorchester in 1786. See p. 561.

[3] See p. 491.

granted, and in which all other Loyalists since the Rebellion and Peace have obtained Lands in the Kings neighbouring Provinces, his Majesty would in Wisdom and Mercy extend a Source of Comfort, and Prosperity to those subjects, and greatly strengthen and increase the Population, Power and Utility of this Province to Great Britain.

That—If it should please his Majesty to use the ungranted Lands in this Province, to the best National benefit, as an Asylum to the Loyalists now in Great Britain, who have infinitely suffered and are in Distress, and who are desirous to become Residents in this his Majestys Colony, and also as an Asylum to those his Majestys Loyal subjects, who have been persecuted during the Rebellion, and yet remain oppressed in the American States, soliciting his Majesty's Royal protection, and an Establishment, as and with his faithful subjects in this Province; His Majesty may increase the number of his Subjects in this Province, many thousands, by conceding the Crown Lands on the same terms and affording the same protection to His subjects in this Colony, which in his Royal Wisdom and Justice, His Majesty doth in the Provinces of Nova Scotia and New Brunswick.

That—Such an Addition of numerous Subjects would not only increase the population of the Province, but infinitely add to its powers, and to the Natural Advantages which Great Britain reasonably ought to expect and receive from an extent of Country, which might be populated, governed, protected and secured as a Colony, drawing small expences, and affording great benefit to the Nation.

That—So far from Concurring in the Opinion, that the General Tenure of Lands, now held under the Crown in this Province, were under the Feudal System, by grants from the French King to his Subjects en Fief & en Roture, and that to grant the Crown Lands in the same manner, would preserve an uniformity in the Tenure of Estates, and the Laws that governed Civil Rights thereon, & therefore ought to be conformed to by any new Grants: That he humbly conceives it may well deserve the deliberation of Government, whither it will not be more for the Interest of his Majesty and the Nation, and also to the Holders of lands in Seigneurie and en Roture, if his Majesty would be graciously pleased to concede and make a free gift of his rights to mutation fines, & permit as well the Seigneur as the Censitaires or Vassal to convert their Estates into free and common Soccage, the latter upon a Commutation with the Seigneur for his Rights on the Vasallage tenure, such a grant and permission would be gratefully received, and would have the Effect at no very distant period of assimilating this to the other of His Majestys Colonies in America.

And he further humbly Conceives, that if the Crown lands Contiguous to those at present settled, were to be granted to and Cultivated by his Majestys English subjects, they would diffuse a Spirit of Industry and a Knowledge in Agriculture, that would prove of infinite Benefit to the Colony and the Nation.

(signed) JOHN JOHNSON

LETTER FROM THE MAGISTRATES AT CATARAQUI TO SIR JOHNSON, BARONET.[1]

Cataraqui 22nd Decemr 1786.

Sir,

Your Circular letter directed to the Magistrates of the New Settlements, dated the 27th Novr reached this place to day, at a time when a Memorial was preparing to be laid before His Excellency Lord Dorchester, in Council respecting some matters deemed essential to the welfare of the Settlements in this District; and we are happy to find His Lordships Disposition to serve us has render'd such a step unnecessary; and it gives us an additional pleasure that we are required to transmit our Sentiments on such an important Subject, to you, Sir, of whose Exertions to procure us every advantage, our Situation will admit of, we cannot entertain a Doubt.

The Object that first presents itself as of the most Importance is the Tenure of the Lands; The Conditions on which they have been granted to the Loyalists in this Pro-

[1] Canadian Archives, Q 27-2, p. 510. The name of Cataraqui was shortly afterwards changed to "Kingston."

GSL

vince are so different from what they have been used to, and so much more burthensome than those offered to our fellow sufferers in Nova Scotia and New-Brunswick, that they are universally disagreeable.

Nothing in our opinion would conduce so much to the prosperity of these Settlements as the putting the grants of Lands on the same footing they are on in the rest of British America. This would at once give the most universal satisfaction, Enhance the Value of all the other Benefits that Government has bestowed on the Settlers, and prove the most powerful Spur to Industry of all kinds.

Next in order is the due Execution of Justice and the Administration of the Laws. The power lodged at present in the Magistrates is found by experience very inadequate to the Regulation of a District so populous and extensive as this. Many Causes have and must occur, that, they are not Authorized to determine, and many Crimes and trespasses have and probably will be Committed, that, it is not in their Power to punish.

The Courts of the lower parts of the Province are so distant, and the expence and trouble of attending them, and bringing the necessary Witnesses so far from their Homes, so great, that unless in cases of great importance, a Enormity Offenders mu t always escape with Impunity : The ruinous consequences of which must be sufficiently obvious

To prevent these, we would recommend the Establishing at this place Courts of both Civil and Criminal Jurisdiction, for the Settlements in its Vicinity ; so that all matters respecting either Persons or Property may be decided without any great delay or expence. And we think moreover, that it will still be useful to the Settlements that the Justices of the Peace retain the power they are invested with of deciding Causes not exceeding the Value of Five Pounds; as the sueing for such small Sums at Court must generally be attended with more expence than the first demand amounts to, and the Speedy decision of such causes is often of more consequence to the parties than the Sum itself.

That the Proceedings of our Courts be regulated as far as possible by the Laws of England is a matter much to be wished ; but whatever system is adopted in this respect, we conceive it would be highly useful to have it commited into a regular form and printed.

The Election or appointment of proper Officers in the several Townships to see that the necessary Roads be opened and kept in proper Repair, we conceive, would be of great utility, by facilitating the communication with All parts of the Settlement.[1]

Humanity will not allow us to omit mentioning the neces-ity of appointing Overseers of the Poor, a making of some kind of provision for Persons of that Description, who from age or accident may be rendered helpless, And we conceive that it would be proper that the persons appointed to this charge, as well as the Road Masters, should be directed to make regular reports of the state of their Districts, to the Courts at their Meetings ; and be in all Cases subject to their Controul.

After providing for the Security of Persons & Property, the object that next presents itself for consideration is the Trade of the Settlement.

Its exports, if we may use the expression, will probably be confined to the following Articles, namely, Wheat and all kinds of Grain, Hemp, Flax seed, Potash and Lumber; and in Proportion to the price and demands for these Articles, will be the ability of the Settlement to purchase the Manufactures of the Mother Country.

From the recent Establishment of this Settlement it cannot be expected that at present the Settlers should be able to do more than provide themselves Bread ; but in the forming of Regulations for promoting their prosperity, we presume that regard will be had to what their situation is likely to be in a few years.

And in this View it may be useful to Appoint Inspectors at this place to examine all the different Articles of Produce that are intended to be sent for sale from this Settlement to the lower parts of the Province, that none but what are of the best quality may be so sent ; and that it may not be in the power of individuals to bring the produce of the Settlement into disrepute, by offering for Sale Articles of indifferent Quality.

[1] This is the beginning of the agitation in the western settlements for the introduction of municipal government.

We would also submit to the Legislature the propriety of encouraging by a Bounty, the raising and dressing of Hemp & Flax Seed, and the manufacture of Potash; these being Articles that Great Britain annually purchases from Foreign States to a considerable Amount; Whatever her own Settlements can supply is of course a National Saving; and the Manufacture of Potash in particular is so useful to a new Country in more than one way, that it seems to merit peculiar Encouragement.

There are two other things relative to this subject that will be productive of much advantage to this Settlement; and these are, that Government should take what Grain &c the Settlers may have to spare towards furnishing the necessary supplies for the Troops &c. in the Upper Posts; and make this place instead of Carleton Island[1] the Quarters of the Naval Department and the Depôt of Stores &c. intended for the Garrisons in the Upper Country.

As these however are matters that depend solely on His Lordships good pleasure, you may perhaps think them foreign to the purport of your Letter; But they are matters of such great utility to the Settlement, that, we could not omit this opportunity of mentioning them: And we trust that your regard for its welfare will induce you to represent them to His Lordship in the most favorable manner.

As Government have already been graciously pleased to provide for the Establishment of a Clergyman[2] and school at this place, it is with the utmost diffidence, that, we offer anything on this head; but when it is consider'd that from the extent of this Settlement, it is impossible for the greater part of the Inhabitants to profit by these Establishments, We trust it will not be thought unreasonable to request some assistance towards making provision for Clergyman and School-masters at convenient places through the Settlement; that the Inhabitants in general may participate of the benefits of these useful institutions.

It appears to us also as a matter worthy of consideration, whether Persons residing in the present American States, But who are of known Attachment to the British Government, might not be Admitted as Inhabitants of these Settlements on producing Authentic Proofs of their Loyalty, and whether such Persons might not be permitted to bring with them such Cattle or Farming Utensils as they may possess, and it may also be worthy consideration whether some means might not be fallen upon for introducing such Property into the Settlements as the Present Inhabitants may have possessed and be able to recover in the American States.

They may often be able to get Cattle or farming Utensils for their dues there, when Money is not to be had, but these not being allowed to be brought in are of no use.

Could favourable Regulations be made respecting these matters consistently with the more important Interests of the Province at large, and in such a Manner as to prevent abuses, We believe it would soon make such an Addition to the Population and Property in these Settlements as would visibly increase their Importance.

We have now laid before you such matters as occur to us as the most important for promoting the grand objects mentioned in your Letter consistently with our Situation.

For though the Establishment of the English Laws and form of Government in their fullest extent would unquestionably be the most effectual mode of promoting and Establishing the Welfare of the Settlement, Yet there Are advantages We dare not presume to hope for distinctly from the other parts of the Province.

We are Sir—
with the greatest respect, your
most obedient and
very humble Servants
(signed) Neil McLean.
W. R. Crawford.

[1] During the Revolutionary War a naval post had been established at Carleton Island, which lies between Wolfe Island and the American shore below Cape Vincent. It was also a depot for the transhipment of stores, &c. between the St. Lawrence river and Lake Ontario navigation. It was one of the posts ceded to the United States by the Treaty of 1783, but not given up at the time.

[2] Dr. John Stuart, formerly missionary to the Mohawk Indians, was the first clergyman appointed at Kingston, and hence in Upper Canada.

MINISTRY OF CULTURE · GOVERNMENT OF INDIA
CSL

To the Honorable
Sir John Johnson
Bar^t.
Montreal

James. Parrot
Jeptha Hawley
Peter Van Alstine
Michael Grass.

LETTER FROM THE MAGISTRATES AT NEW OSWEGATCHEE TO SIR JOHN JOHNSON, BARONET.[1]

New Oswegatchee 18^th Dec^r 1786.

Sir,

The Magistrates of this Settlement having communicated to us the contents of your letter of the 27^th Nov^r respecting the best mode for the population, Agriculture and settlement of the Kings Lands in this Province.

We have to request you'll please to return our warmest thanks to His Excellency Lord Dorchester for this early instance of his paternal Care for us, and to represent to His Excellency our Sentiments, & prayers hereunder written, should they corroborate with your own; And if they should in any Instance deviate from what you Judge proper to be represented, we have the fullest confidence in your care & friendship for us; And your general knowledge of the Sentiments, Dispositions, and wishes of the Loyalists settled in this Province; and chearfully submit to you, to make such Alterations in these our Sentiments as your prudence may dictate.

1^st We most earnestly pray for ourselves & in behalf of the Inhabitants of New Oswegatchee, that we may have our Lands by Grants free from any Seigneurial Claims or any other incumbrance whatever, The Kings Quit rent excepted.

2^nd That we may be governed by the British Constitution and Laws for the support of which and his Majestys Crown & Dignity we first took up Arms in Opposition to the American Congress.

3^rd That we may be formed into separate Countys from Pointe aû Baudet upwards, having our own Courts, Judges and Civil Officers &^ca perhaps one County from Pointe aû Baudet to the Great river Gananaque, holding Courts Alternately at New Johnstown and New Oswegatchee, may be the most convenient for the lower settlers, and another County from Gananaque to the Head of Quinty Bay, & a third including Niagara and upwards. And perhaps your Representation may Incline His Excellency to form the whole into a separate Government dependant on Lower Canada.

4^th We humbly conceive that nothing could more rapidly promote the settlement of the Kings Lands, than the Encouragement of the Gospel, and Schools in these Infant Settlements.

And lastly, we pray that a stop may be put to the Importation of Timber or Lumber of any kind into Canada from Vermont, or Any of the American States, and some Encouragement given to the Loyalists to supply Lower Canada with Lumber, as that is at present the only staple commodity in this Country.

We have the Honour to be with great respect & esteem
Sir, your most obed^t & humble Serv^ts

(signed) Justus Sherwood
Wm Fraser
Allan M^cDonell
Joseph White
John Jones.
Peter Drummond
Tho^s Fraser
John. Dulmags.

James Campbell.
Elijah Bottoms.
Thomas Sherwood.
Dan^l Jones.
William Lamson.
Allan M^cDonell.

[1] Canadian Archives, Q 27-2, p. 519. The old post of Oswegatchie is now known as Ogdensburg, and the new establishment on the opposite side of the river St. Lawrence after the Revolutionary War, was known at first as New Oswegatchie. The name was commonly applied to the whole district as far up as Brockville.

GL

DORCHESTER TO SYDNEY.[1]

N° 18. Quebec 13 June 1787

My Lord,

The latter part of the Merchants reports to the Committee of Council for Commerce and Police, together with the petitions from the Canadians occasioned thereby,[2] will shew Your Lordship a diversity of opinions in this province concerning the Laws and a House of Assembly, more accurately, than I should have been able to procure without these representations. The English party has gained considerable strength of late years by the Loyalists, who have taken refuge in the province; and many more discover a strong inclination to follow, so that it is more than probable the desire for an Assembly will annually increase; yet common prudence seems to require, before an alteration of that magnitude should be attempted in a country composed of different languages, manners, and religions (where nine tenths of the people are ignorant of the nature and importance of an Assembly) that the whole plan should be minutely unfolded, and its effects upon the Legislature and the provincial economy clearly discerned. This description should be published and time given for all men to make themselves masters of the project, and form their opinions thereon, free from artifices and intrigues of any kind. Without these precautions it is more than probable, that disappointments and disorders might arise even at the outset. For my own part, I confess myself as yet at a loss for any plan likely to give satisfaction, to a people so circumstanced as we are at present.

But what urges more immediately is an alteration in the tenure of lands to be granted by the Crown. The Instructions direct that these lands be granted in a manner every way similar to the tenure under the French Government.[3] Whatever merit this system might have had formerly, so great have been the changes of late years on this Continent, that a new line of policy, adapted to the present relative condition of the Neighbouring States, and suited to the minds and temper of the King's subjects, is become indispensably necessary for Great Britain. I therefore humbly recommend that His Majesty would be graciously pleased to allow His Governor and Council to grant His lands in free and common soccage, unincumbered with any crown rent whatever; but not more than one thousand Acres to the same person without the King's approbation. Many petitions have been sent down by the Loyalists (the last of which is A—] inclosed)[4] praying among other things to be placed upon the same footing with their brethern in Nova Scotia and New Brunswick; some disorders have also been excited among them, concerning which I have directed immediate investigation. It is not on account of these petitions, that I propose the alteration, but because I judge it highly expedient to remove the Smallest Cause of discord between the King's Government and His people, or between Great Britain and these Provinces, on any score whatever.[5] And it is for this purpose I further recommend, that the thirty pence for every hundred Acres be remitted in Nova Scotia and New Brunswick to all who do not hold more than One thousand acres; as to others, I think this right should be reserved merely as a check on large grants to persons who never mean to cultivate or improve, and who at present obstruct the settlement of those provinces.

It may be advisable to reserve in every township of thirty thousand acres, five thousand to be granted only at a future day under the King's Special directions; These reserved parcels will enable His Majesty to reward such of His provincial Servants as

[1] Canadian Archives, Q. 27-2, p. 983.

[2] See Report on Commerce and Police, pp. 612-639.

[3] It was on the urgent recommendation of Carleton himself that the reversion to the French system for new grants of land was made. See Carleton to Shelburne, p. 202, and draught of Ordinance relating to French land tenures, p. 204. In consequence of this and other recommendations from Carleton, the instruction of July 2nd, 1771, was issued (see p. 295), requiring that all future grants of land to English and French subjects alike should follow the French feudal tenure.

[4] See below p. 647.

[5] See note 3, p. 551.

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may merit the Royal favour, and will also enable the Crown to create and strengthen an Aristocracy, of which the best use may be made on this Continent, where all Governments are feeble, and the general condition of things tends to a wild Democracy. People of property in the States are now, I believe, sensible of the evils occasioned thereby, and would bring forward an adequate remedy, did they know how to carry it into execution.[1]

As the planters approach the Indian country, they are afresh stimulated by the manners of that lawless people, who may be influenced but not easily controlled, and they in a great measure imbibe their uncivilized ideas of liberty. The American side of the great lakes would in a short time be covered by settlers of this description, was it not for their fear of the Savages. This check sooner or later will be done away, prudence therefore requires we should prepare for the event in time, by placing the King's subjects on this side in every respect in a situation at least as eligible, as that of their neighbours.

The introduction of intermediate seigneurs at that distance would, I think, be totally impracticable.

The Canadians at Detroit have been under a strong military control, and therefore have paid their rents and mutation fines, the produce of which has been taken by the Commanding Officer of the Post as his perquisite, I know not by what Authority; their friends on the Wabache paid nothing, placed as they were at some distance from our garrison at Detroit; and from hence we may understand their aversion to our taking post among them; they expected we should require the same dues paid at Detroit, from which the Americans, they were assured, would set them free.

The Quitrents in the English Colonies were not one sixth of the burthen on these lands en roture, and yet I understand that Government was never able to collect them; but, after the revolt had taken place, offered to relinquish the claim; from all which I am convinced these dues never will be paid, and only prove a perpetual cause of discontent, and afford the means of alienating the minds of the people from the King's Government.

I am with much respect and esteem

Your Lordship's most obedient, and most humble servant.

DORCHESTER

The Right Hon[ble]
Lord Sydney

PETITION OF THE WESTERN LOYALISTS.[2]

Copy / To His Excellency the Right Honorable Guy Lord Dorchester Captain General and Governor in Chief of the Colonies of Quebec, Nova Scotia, and New Brunswick, and their dependencies, and Vice Admiral of the same. General and Commander in Chief of all His Majesty's Forces in the said Colonies, and the Island of Newfoundland.

The petition of the Subscribers, residing in the new settlement, in behalf of themselves and the Inhabitants at large, in the respective Townships, from Point au Baudet on Lake S[t] Francis Westward, as far as Niagara.

Humbly sheweth,

[1] This paragraph indicates the central policy of much of the Constitutional Act of 1791, and the basis of the Crown Reserves, in addition to the Clergy Reserves.

[2] Canadian Archives, Q. 27-2, p. 989. This is the petition referred to in the foregoing letter from Dorchester to Sydney and enclosed with it.

That your Petitioners impressed with the most lively sentiments of gratitude, beg leave through the Channel of your Lordship, to offer their sincere, and united tribute of thanks to their most gracious Sovereign for the singular, and multiplied favors conferred on them; at the same time they presume that your Lordship will with your wonted Goodness, interest yourself in regard to some propositions they have to make which with submission, they conceive are very essential to promote the happiness of the People, and facilitate the progress of the settlement; and they humbly hope, that what your Lordship cannot with propriety grant yourself, you will be So condescending as to recommend to His Majesty, for His Royal approbation and consent.

1st It is the confirm'd opinion of your Petitioners from the fullest conviction, that if the blessings of the British Constitution was extended to this infant Settlement, and their Lands granted according to English Tenures, such a change wou'd produce many happy effects, among the rest to augment the happiness of the People, to strengthen the bands, as well as the Interest of Government, to give a Spur to Industry, to population and Commerce and damp the hopes, and the expectations of their enemies;—at the same time they must confess, it is not without some degree of envy that they reflect on privileges, and indulgences, granted to their fellow Sufferers in Nova Scotia which they themselves do not enjoy—especially when the same motives which engaged them in the Honourable and Glorious cause of defending the rights of their Sovereign, and the dignity of the Nation, places them on the same footing, and gives them equal pretensions. but notwithstanding they rest satisfied in the hope that your Lordships representation of their situation, will induce His Majesty to interpose His Royal favor in their behalf, to remove all cause of Jealousy and crown the happiness of your Petitioners; the arrangement for this purpose so anxiously wished for, and the arguments in support of it, are so well described in a petition drawn up by Sir John Johnson and others, in behalf of themselves and the Loyalists at large in this Province (and presented to His Majesty in Council the 11th April 1785)[1] renders it unnecessary to add anything further on the subject at present, except to beg leave to refer your Lordship to the aforesaid Petition, and to transmit you a Copy, which will accompany this.

2d Your Petitioners pray for some assistance in establishing the Church of England, and Scotland, in this Infant Settlement, and that a Glebe of Four Hundred Acres of Land in each Township, may be set apart for a Clergyman.

3d. They pray for some assistance towards establishing a school in each district viz' New Johnstown, New Oswegatchie,[2] Cataraqui and Niagara, for the purpose of teaching English, Latin, Arithmetic and Mathematics.

4th They pray for a prohibition of Pot and pearl Ash and Lumber from the State of Vermont, to prevent a door being opened for an Illicit Trade from the United States, which wou'd be a detriment to the Province in general, to this Settlement in particular, and only beneficial to a few interested Individuals—they also pray for a Bounty to be laid on the above Articles, as well as on Hemp, in Order to stimulate their Industry, and encourage their internal Trade.

5th They pray that Government will be so generous in addition to former Bounties, to grant them a loan of three month's provisions, consisting of the article of Pork only. —to be paid by the Settlers in three Years, under such restrictions and obligations as may be thought most expedient to insure the punctual payment of the same.

6th They beg to inform your Lordship that a number of the Inhabitants who have been in the service are so unfortunate as not to have drawn any Clothing by reason of their not being in the Province at the periods when it was issued, and that others who

[1] This petition is given at p. 524.

[2] New Johnstown was the general name for the eastern portion of what was afterwards the District of Luneburg, and still later the Eastern District. It comprised townships 1 to 5 from Point Baudet westward. In its narrower sense it was a village in the township of Edwardsburg, about three miles east of Prescott, which was for a time the capital of the Eastern District. New Oswegatchie was, in like manner, the older general name for the western portion of the District of Luneburg comprising townships 6, 7 and 8. It was originally occupied by Jessup's Corps. Cataraqui, afterwards Kingston, while retaining its local designation as under French rule, was nevertheless used to indicate the whole settlement in its neighbourhood, comprising the seven adjoining townships to the westward.

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cannot be put in this class are yet notwithstanding on account of their distress'd situation rendered objects deserving of such an indulgence.

7th They pray that some Plan may be adopted to expedite the Business of running the division lines in the respective Townships, to prevent the increase of an evil already experienced on account of that not being done.

8th they pray that a Post Road may be established from Montreal to Cataraqui with Post Officers for Letters &ca at New Johnstown, New Oswegatchie, and Cataraqui.

9th They Pray that a passage may be opened from the head of the Bay of Quinty through Lake Huron for the Benefit of the Indian Trade, a Channel which at the same time that it is universally acknowledged to be Superior to the Old holds out a prospect of the most flattering advantages, not only to the Commerce of this Province in general, but to this settlement in particular. It is also humbly requested that the shipping may be allowed to Rendezvous at Cataraqui and the Inhabitants have the free use of the Lakes for whatever craft they may chuse to build.

10th They pray that three places may be pitched upon between Point au Boudet and Cataraqui for the purpose of receiving Grain from the Settlers when they have any to Spare, in consequence of your Lordship's generous proposal communicated to them thro' the Inspector of Loyalists.

11th They pray your Lordship will be so kind as to use your influence with the Commissioners appointed to examine the Claims of the Loyalists, to induce them to make a Journey to New Johnstown, New Oswegatchie, and Cataraqui to investigate the Claims of the Loyalists on this Communication, as the poverty of the Settlers in General and the expence of an attendance at Quebec or Montreal in the prosecution of their Claims, will discourage them from the attempt, or oblige them totally to relinquish them.

12th They also pray that your Lordship will be so good as to confirm to them the use of the Locks or Canalls[1] as hitherto granted by his Honor Lieut Governor Hope, and that you will likewise please to put them on an equal footing with the 84th Regt in Regard to the proportion of Lands granted to that Corps ;—this is a flattering object to your petitioners whose finances are mostly exhausted in the expensive and Arduous task of forming a Settlement in a New Country, and which on that account as well as the justice of their pretensions they hope will induce your Lordship to take this Matter into consideration.

Upon the whole your Petitioners have the fullest confidence that your Lordship will be so good as to pay every attention to the several Articles contained in this Petition that accord with Reason and Justice, and those which may appear otherwise they conceive your Lordship will kindly impute to a mistaken opinion, or want of proper information. And Your Petitioners as in duty bound will ever Pray

signed

Peter VanAlstine—	4th	Township		Alexr McDonell, Township		No	1
George Singleton—	3	do	Bay Quinty	S. Anderson. Township			2
Archd McDonald	5	do	Bay Quinty	John McDonell—	do	No	3
John Everitt	1	do	Bay Quinty	Richd Duncan—	do.—	No	4
Henry Simmons	2	do	Bay Quinty	John Munro—	do.—	No	5
				Wm Fraser—	do.—	No	6.
				Justus Sherwood, James Campbell, John Jones.	do	No	7
New Johnstown April 15th 1787				Thos Sherwood, Peter Frul	do	No	8

[1] Referring to the improvements made by the Government at various points on the River St. Lawrence, for facilitating the navigation of the river by batteaux.

MEMORIAL OF MERCHANTS TRADING TO QUEBEC.[1]

To the Right Honorable Lord Sydney one of his Majesty's principal Secretaries of State &c &c

The Memorial of the Merchants Trading to the Province of Quebec.

Humbly Sheweth

That your Memorialists had the Honor in May 1785 of presenting to your Lordship Petitions from the Inhabitants of the Province of Quebec, praying for a reform of the Civil Constitution of that Colony.[2]

Your Memorialists were sensible that those Petitions deserved the most serious consideration, and therefore in Compliance with the wishes of his Majesty's Ministers recommended to their Constituents, to defer bringing them forward in Parliament, untill the necessary information could be received on the Allegations contain'd therein.

That your Memorialists by Letters and other Papers received from their Constituents last Fall have been urged in the strongest Terms to bring forward their Petitions Presuming that Government is now possessed of sufficient proof, that their Complaints against the present Constitution, of the Province, and the mode of administering justice in the Courts of Law are well founded.

That your Memorialists from the defects in the present System of Laws, and the great uncertainty in the decisions of the Courts, have sustained immense Losses, and If a Remedy is not speedily applied, are under the most alarming apprehensions of suffering further from the same Causes, they beg leave therefore to submit as their opinion that the only Effectual means of removing the Evils Complained of, restoring unanimity and promoting the prosperity, of that Province will be to grant them an Elective House of Assembly, the English Commercial Laws, and to reform the Courts of Justice as Prayed for in their Petitions.

Your Memorialists convinced from the Premises that a longer delay in bringing forward the Petitions committed to their Care will prove equally injurious to the Province, and the Interests of the Mother Country, pray they may be informed what Measures are intended by his Majesty's Ministers for the relief of that distressed Colony.

New York Coffee House
4th February 1788

Robt Hunter
Phyn, Ellice & Inglis.
Murray & Sansom.
Jno. Paterson.
Amos Hayton.
Brickwood Pattle & Co.
Dyer Allan & Co.
Robt Rashleigh & Co.
M & T. Gregory & Co
Elias Lock.
Miller Hart & Co
Harrison Ansley & Co
Bowring Trist & Co.
Adam Lymburner.
Hunter & Blanchard.

[1] Canadian Archives, Q. 56-3, p. 745.

[2] Referring to the petitions of Nov. 24th, 1784, presented in 1785. See p. 502.

MINISTRY OF CULTURE · GOVERNMENT OF INDIA

GL

PATENT CREATING NEW DISTRICTS.[1]

NUM. 1198.

SUPPLEMENT TO THE QUEBEC GAZETTE.

(Signed)

DORCHESTER, G:

George the Third, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To all Our loving Subjects, Greeting: Whereas Our Province of Quebec stands at present divided only into two Districts, and by virtue of two certain Acts or Ordinances, the one passed by Our Governor and the Legislative Council, in the twenty-seventh year of Our Reign, and the other in the present year, provision is made for forming and organizing one or more new Districts: Now therefore Know Ye, That Our Governor of Our said Province, by the advice and consent of Our Council of Our said Province, and in pursuance of the Acts and Ordinances aforesaid, hath formed, and doth hereby form the several new Districts herein after described and named, to wit, the District of Lunenburg, bounded on the East by the Eastern limit of a tract lately called or known by the name of *Lancaster*, protracted Northerly and Southerly as far as Our said Province extends, and bounded Westerly by a North and South line intersecting the mouth of the river *Gananoque*, now called the *Thames*,[2] above the rifts of the *Saint Lawrence*, and extending Southerly and Northerly to the limits of Our said Province, therein comprehending the several towns or tracts called or known by the names of *Lancaster*, *Charlottenburg*, *Cornwall*, *Osnabruck*, *Williamsburg*, *Matilda*, *Edwardsburg*, *Augusta and Elizabeth-Town*; And also one other District to be called the District of *Mecklenburg*, extending within the North and South bounds of Our said Province, from the Western limits of the said District of *Luneburg*, as far Westerly as to a North and South line intersecting the mouth of a river now called the *Trent*, discharging itself from the West into the head of the *Bay of Quinty*, and therein comprehending the several towns, or tracts called or known by the names of *Pittsburg*, *Kingstown*, *Ernest-Town*, *Fredericksburg*, *Adolphus-Town*, *Marysburg*, *Sophiasburg*, *Ameliasburg*, *Sydney*, *Thurlow*, *Richmond* and *Camden*; and also one other District to be called the district of *Nassau*, extending within the North and South bounds of Our said Province, from the Western limit of the last mentioned District, so far Westerly as to a North and South line, intersecting the extreme projection of *Long-point* into the *Lake Erie*, on the Northerly side of the said *Lake Erie*; and also one other District to be called the District of *Hesse*, which is to comprehend all the residue of Our said Province, in the Western or inland parts thereof, of the entire breadth thereof, from the Southerly to the Northerly boundaries of the same; and also one other District to be called the District of *Gaspé*, and to comprehend all that part of Our said Province on the Southerly side of the river *Saint Lawrence*, to the Eastward of a North and South line intersecting the North-easterly side of *Cape Cat*, which is on the Southerly side of the said river, of which all Our loving Subjects are to take due notice and govern themselves accordingly. In Testimony whereof We have caused these Our Letters to be made Patent, and the Great Seal of Our said Province to be hereunto affixed. Witness Our Trusty and Well-beloved Guy Lord Dorchester, Captain-general and Governor in chief of Our said Province, at Our Castle of *Saint Lewis*, in Our City of *Quebec*, the twenty-fourth day of *July*, in the year of Our Lord one thousand seven hundred and eighty-eight, and of Our Reign the Twenty-eight.

(Signed,) D.

(Signed,) GEO: POWNALL, Sec^y.

[1] Canadian Archives Q. 39 p. 122. As stated in the introduction, this Patent was issued in accordance with the Ordinance of April 30th, 1787. See p. 583.

[2] This name was not permanently adopted, that of "Gananoque" being retained. But, at the instance of Lt. Governor Simcoe, the River "Tranche" in western Ontario was afterwards named "Thames."

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SYDNEY TO DORCHESTER.[1]

Whitehall 3[d] Sep[r] 1788.

Lord Dorchester.

My Lord.

Your Lordship will have seen, by the proceedings which took place in Parliament in the course of the last Session, the Arguments which were made use of on the Introduction of the Petition brought by Mr. Lymburner from Quebec, for a Change of the present Constitution of the Province, and the reasons which occurred to His Majesty's Ministers for avoiding any decision upon that very important Subject.[2]

[1] Canadian Archives, Q. 36 2, p. 469.

[2] On May 16th, 1788, Mr. Powys moved in the House of Commons, that Mr. Adam Lymburner, Agent of that section of the population in Canada, French and English, desirous of having a House of Assembly, &c., be heard at the Bar of the House in support of the petition from Quebec of 24th Nov., 1784. Mr. Lymburner being admitted read a paper pointing out the defects of the system of laws then administered in the Province and the need for a remedy. This paper is given in Q. 62A-1, pp. 1-101. After he had withdrawn, a debate followed which is quite fully reported in Hansard, Vol. 27, pp. 511-533. The substance of the debate, however, is given in the following summary from the London Chronicle.

"*Mr. Powys* entered into a detail of circumstances and the allegations contained in the petitions. He stated it as the general wish of the Canadians, that some determinate code of laws should be established in that Province, and that they might not henceforward be subjected to the sole ordinance of a legislative Council, appointed by the Crown, and removable at the pleasure of the Crown. They wished to have a House of Assembly instituted in the province, and the English laws in general extended to them. He observed, that they had not the privilege of Habeas Corpus; at least it was not a part of their constitution, though it might be occasionally allowed them. They were deprived of the trial by Jury, except in a few instances. As to the Council, above alluded to, it ought not to exist; for, in the opinion of the best informed and most elegant historian of the present age (Mr. Gibbon), where the legislative power is appointed by the executive department, it is a sure criterion of a despotic government. The petitioners wished to be put on the same footing with the provinces of Nova Scotia and New Brunswick, which have a House of Assembly, and partake of the blessings of English laws. He thought their request was just and reasonable, and merited the attention of the House. He concluded with moving, That it is the opinion of this Committee, that the petitions from Quebec merit the serious and immediate attention of the House.

Sir Matthew White Ridley seconded the motion. The laws, he said, were in Canada vague and undefined; and wherever this is the case, very great abuses are the consequence. He hoped, that if the House should not find time in the remainder of this session to come to any ultimate decision on the subject, they would at least adopt a resolution that might give the Canadians good reason to hope for a determination in their favour in the succeeding session.

The *Chancellor of the Exchequer* agreed with the Hon. Mover, that the petitions deserved the serious attention of the House; but nothing could be done immediately in the business. Parliament, he said, was not ripe for the discussion of an affair of such magnitude as the framing of a constitution for a large, flourishing and growing province. A sufficient body of information had not been transmitted from that colony, to enable the House to determine upon the merits, of the subject contained in the petitions. As to the appointment of a House of Assembly, though he was inclined to recommend that mode of legislation, he had strong doubt whether it would be proper at this time, when the province was in a state of heat and fermentation. A popular Assembly would not tend to allay that heat. The privilege of Habeas Corpus was ordered by the Legislative Council of Quebec, to be granted to the inhabitants; so that they had no reason to complain in that particular. He was not pleased with the motion in its present form.

Mr. Fox ridiculed the idea that Parliament was not ripe for the formation of a constitution for Quebec. Could it be supposed that, after that province had been in our possession for the space of 25 years, sufficient information had not been procured to authorise a complete determination upon what laws were most expedient for the government of it? He charged His Majesty's Ministers with great neglect, and even with being unfit for the offices they held as they had not taken the proper steps to accelerate this business.

The Chancellor of the Exchequer vindicated himself from the charge of neglect; and *Mr. Fox* rejoined.

Mr. Marsham thought the House ought to pass a bill immediately for extending the Habeas Corpus Act to Quebec; that it might no longer be considered as a mere favour or indulgence to the inhabitants, but as a matter of right. He also proposed, that after the Chairman should have left the chair, the House should pledge itself to enter fully into this business early in the next session.

Mr. Sheridan regarded the Ministry as culpable, for having so long neglected the proper adjustment of the laws for the province of Canada.

Mr. Alderman Watson remarked, that great inconveniences arose in Canada from the bad administration of bad laws, and hoped that the British laws, in general would be extended to that province.

Mr. Martin was convinced of the propriety of coming to a speedy determination on this head.

Sir James Johnstone was friendly to the prayer of the petitions; but wished that the discussion might be postponed till next session.

Mr. Burke agreed to the motion.

Mr. C. L. Smith, Sir W. Dolben, Sir Herbert Mackworth, and Sir Watkin Lewes, also spoke on the occasion.

The Chancellor of the Exchequer having moved, that the Chairman leave the Chair, instead of putting the question on Mr. Powys's motion, a division took place; when the numbers were, for the Minister's motion 104, against it 39, majority 65.

Mr. Powys then moved, that this House will, early in the subsequent session, take into consideration the petitions from Quebec." The London Chronicle, May 15-17, 1788. Vol. 63 p. 479.

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It will, however, be absolutely necessary that it should be resumed very shortly after the next meeting, and it will, of course, be a matter of great importance to His Majesty's Servants, that they should be previously prepared to enter into a full discussion of the business, and to propose such arrangements as may be found to be expedient for removing every just and reasonable cause of complaint that may exist among His Majesty's Subjects, of any description whatsoever, who are Inhabitants of that Province.

The variety of applications which have from time to time been transmitted from thence upon this business, of so opposite a tendency to each other, render it extremely difficult to fix upon any Arrangements calculated to satisfy all the Parties interested in, or connected with it;[1] His Majesty's Servants however, are desirous to give the matter a full consideration and that they may be the better enabled to form a competent judgment of the steps adviseable to be taken, they are solicitous of obtaining from Your Lordship a full and impartial account of the different Classes of Persons who desire a Change of Government, as well as of those who are adverse to the Measure, specifying, as nearly as it can be ascertained, the Proportion of Numbers and Property on each side in the several Districts; and, That your Lordship at the same time should state in what manner, either the interests, or influence of the latter, might be affected by any alteration, and what is the Nature and grounds of their apprehensions from the Introduction of a greater Portion of English Law, or of a System of Government more conformable to that established in other British Colonies.

In particular, They wish to be informed from what Causes the objection of the old Canadian Subjects[2] to an House of Assembly chiefly arises: Whether, from its being foreign to the Habits and Notions of Government in which they have been educated, or, from an apprehension that it would be so formed as to give an additional Weight to the New Subjects, and lead to the introduction of Parts of the English Law which are obnoxious to them; or, from an idea that being invested with a Power of Taxation, it would eventually subject their Property to Burthens from which they are at present exempted; In like manner, whether the Objections which appear to exist to a farther Introduction of Trial by Jury, arise either from Prejudices against the Nature and Mode of such a decision, or from the difficulty of finding Jurors properly qualified, and the inconvenience to Individuals of the necessary Attendance; or from the Notion of this species of Trial being necessarily coupled with Modes of Proof and Rules of Law, different from those to which they are accustomed.

Though several of these points have already been noticed by Your Lordship in some of your Letters to me, and in the Papers which accompanied them, yet His Majesty's Servants do not think that they are sufficiently explicit to enable them to form a decided opinion.

The anxiety of His Majesty's Servants to be perfectly informed with regard to all these matters as soon as possible, has induced them to send out an Extraordinary Packet Boat, and they are in hopes of receiving from Your Lordship upon her return, a full communication of the Sentiments entertained upon these several heads of enquiry, and which communication they wish to be made in a manner that may be proper to be laid before Parliament, at the next meeting.

I find, upon an examination of the Plans transmitted by Your Lordship's predecessor,[3] that the most considerable part of the disbanded Troops and Loyalists who have become Settlers in the Province since the late War, have been placed upon Lands in that part of it which lie to the Westward of the Ceders,[4] and beyond those Lands (ex-

[1] The most typical of these petitions have been reproduced in this volume.

[2] Though the British element were commonly referred to as the "old," or "antient subjects," and the French Canadians as the "new subjects," yet in this instance Lord Sydney, by the introduction of the word "Canadian," evidently refers to the French Canadians.

[3] General Frederick Haldimand.

[4] Referring to the Cedars and Coteau rapids on the St. Lawrence below lake St. Francis.

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cepting only Detroit and its Neighbourhood) which are granted in Seigneurie ; as these People are said to be of the number desirous of the Establishment of the British Laws, It has been in Contemplation to propose to Parliament a division of the Province, to commence from the Boundary Line of the Seigneurie granted to Monsieur De Longueil, and to take in all the Country to the Southward and Westward in the manner described in the inclosed paper. But, before they take any step towards the execution of this measure, they are desirous of receiving the advantage of Your Lordships opinion how far it may be practicable or expedient ; or, whether any other line or mode of separation would be preferable. Your Lordship will however understand, that it is The Kings intention that the New Settlers in that part of the Province who now hold their Lands upon Certificates of Occupation, shall, at all events, be placed upon the same footing in all respects, as their Brethren in Nova Scotia and New Brunswick, by having their Lands granted to them in free and Common Soccage, with a Remission of Quit Rents for the first Ten Years ; and Instructions will be prepared accordingly, as soon as Your Lordship's opinion upon the plan abovementioned shall be obtained.

With a view to the execution of the Plan in question, it will be necessary for you to consider, previously to your Report upon it, what sort of Civil Government ought to be formed for its internal arrangement, & whether the Number and description of the Inhabitants and other Circumstances are such as do, or do not, make the immediate Establishment of an Assembly within this district, practicable and adviseable. At all events It will be natural, as the greatest Part of these New Settlers are attached to the English Laws, that that System should be introduced as the general Rule, with such Exceptions or Qualifications as particular and local Circumstances may appear to require ; At the same time Your Lordship will attend to the situation to which the Old Canadian Settlers at Detroit would be reduced, provided it may be found expedient, in consequence of the Information which the King's Servants expect to receive from Your Lordship, (and by which you will understand they mean in a great degree to be guided) to resist the Application for any Change of the Constitution of the remaining part of the Province ; and, Your Lordship will also consider, in case of such a determination, in what part of the Province within the reserved limits, the Settlers at Detroit, if they should desire to be removed, might be accommodated with Lands the best suited to their advantage.

I am &ca

SYDNEY

DORCHESTER TO SYDNEY.[1]

Nº 94 Quebec 8th November 1788.

My Lord,

The Province of Quebec consists at present of seven districts or counties ; Quebec and Montreal in the central parts, Gaspe at and near the mouth of the Saint Lawrence, and the country, west of Point au Boudet, divided into the four districts of Luneburg, Mecklenburg, Nassau, and Hesse. The Canadians, or new subjects, occupy the districts of Quebec and Montreal, and some are also to be found in the districts of Gaspe, and Hesse. The three districts of Luneburg, Mecklenburg, and Nassau, are inhabited only by the loyalists, or old subjects of the Crown. The Commerce of the country being chiefly carried on by the English occasions a considerable mixture of inhabitants in the towns of Quebec and Montreal, nearly in the proportion of one British to two

[1] Canadian Archives, Q 39, p. 109. In this we have Dorchester's reply to the inquiries of Lord Sydney in the foregoing despatch.

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Canadians. Some of the former are also settled at Three rivers, Terrebonne, William Henry, Saint Johns, and the entrance of Lake Champlain, and a small number are dispersed among the Canadians in the country parishes; the fur trade has collected some hundreds at Detroit, as the fisheries have at the bay of Chaleurs, and other parts of the district of Gaspe. The proportions of British and Canadians in the two districts of Quebec and Montreal, exclusive of the towns, may be about one to forty, in the same districts, inclusive of the towns, one to fifteen, in the district of Hesse one to three, in the district of Gaspe two to three, and in the whole province, taken to gether, about one to five.

A change of the laws and form of government, by the introduction of an Assembly, is chiefly promoted by the commercial part of the community, in the towns of Quebec and Montreal. The Canadian Habitans, or farmers, who may be stiled the main body of the freeholders of the country, having little or no education, are unacquainted with the nature of the question, and would, I think, be for, or against it, according to their confidence in the representations of others. The Clergy do not appear to have interfered. But the Canadian gentlemen in general are opposed to the measure; they object to the introduction of a body of new laws, to the extent and tendency of which they are strangers; they express apprehensions of much disquietude among the people from the introduction of an assembly, and conceive that the low state of learning and knowledge in the country would lay them open to the pursuit and adoption of wrong measures, and to dangers, which a more enlightened people would not be exposed to. The fear of taxation, I take for granted, is among the motives of those, who are adverse to the change, and would no doubt strongly influence the sentiments of the common people, if they should come to consider the merits of the question. The objections, which appear to exist to a farther introduction of the trial by jury, arise partly from prejudice, and partly from an idea, that the choice would be narrow, and render it difficult to find jurors, totally disinterested.

In addition to these observations, it may be proper to mention, that the population of this country is chiefly confined to the margin of the waters from the western side of the gulph of Saint Lawrence in the district of Gaspe, to the settlements at and above Detroit, a chain of not less than eleven hundred miles; and that, though the ancient settled parts of the districts of Quebec and Montreal, from Kamaraska to Point au Boudet (comprehending about three hundred and seventy miles of the above line) may find no great burthen in the expence of a representation, it may be otherwise with the inhabitants newly set down in Gaspe, Luneburg, Mecklenburg, Nassau, and Hesse, and that the inconveniencies and charges of assembling, from parts so distant, would be increased by the nature of the climate, which renders the roads for several months in the year difficult, if not impracticable.

A division of the province, I am of opinion, is by no means adviseable at present, either for the interests of the new, or the ancient districts, nor do I see an immediate call for other regulations, than such as are involved in the subject of the general jurisprudence of the country. Indeed it appears to me, that the western settlements are as yet unprepared for any organization, superior to that of a county. This has lately been given to them, and will, I trust, answer their present wants, if I except Hesse, whose commercial and complicated affairs call for a particular provision, now under the consideration of a Committee of the Council. But though I hold a division of the province at present inexpedient, yet I am of opinion, that no time should be lost in appointing a person of fidelity and ability, in the confidence of the loyalists, to superintend, and lead them, and to bring their concerns with dispatch to the knowledge of government, under the title of Lieutenant Governor of the four western districts above named.

Should a division of the province notwithstanding be determined by the wisdom of His Majesty's Councils, I see no reason, why the inhabitants of those western districts should not have an Assembly, as soon as it may be organized without detriment to their private affairs, nor against their having so much of the English system of laws, as may suit their local situation, and condition. But in this case particular care should be taken to secure the property and civil rights of the Canadian settlers at Detroit, who, I am convinced, would not chuse to emigrate, though good lands might be given them in

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the lower parts of the province. But, should they chuse to move, it would be attended with much inconvenience, as would their being left insulated, and attached to the district of Montreal.

With respect to proper limits for the new government, in the event of a separation, I would recommend those described in the annexed paper, which will comprehend all the settlements of the loyalists on the river Saint Lawrence above Point au Boudet, and those also lately laid out for them on the south side of the Uttawas river.

I am with much respect and esteem

Your Lordship's most obedient, and most humble servant

DORCHESTER

The Right Hon^ble^ Lord Sydney

THE PROPOSED LINE OF DIVISION.

To commence at a stone boundary on the north bank of the Lake S^t^ Francis, at the cove west of pointe au Bodet, in the limit between the township of Lancaster, and the seigneurie of New Longueuil, running along the said limit in the direction of North, thirty four degrees west, to the westernmost angle of the said seigneurie of New Longueuil, thence along the north western boundary of the seigneurie of Vaudreuil running north twenty five degrees east, until it strikes the Ottawas River, to ascend the said river into the lake Temiscaming, and from the head of the said lake by a line drawn due north until it strikes the boundary line of Hudson's bay, including all the territory to the westward and southward of the said line to the utmost extent of the country commonly called or known by the name of Canada.

D

Endorsed: In Lord Dorchester's N^o^ 94 of 8^th^ Novem^r^ 1788.

FINLAY TO NEPEAN.[1]

QUEBEC 9^th^ february 1789.

Dear Sir

The great question, whether a House of Assembly would contribute to the welfare of this Province in its present state? has been so fully discussed, that the subject is entirely exhausted—both old and new subjects here, who have openly declared their sentiments, now composedly wait the decision of the British Parliament with respect to Canadian Affairs.

It was, in my humble opinion, a wise measure to endeavour to draw from every quarter as much information as could possibly be had—there has not been any restraint on the people—they have said all they had to say. The petitions and counter petitions to His Majesty, (which have no doubt ere now reached the foot of the Throne) have been published in our Gazette.[2]

I am ignorant of Lord Dorchester's way of thinking relative to a house of the representatives of the people; I do not believe that he has confided his opinion on that head to any person on this side of the Atlantic.

Every thing considered relative to the present situation of this Province, I confidently believe that a constitution founded on the 12^th^ Article of His Majesty's instruc-

[1] Canadian Archives, Q 43-2, p. 714.

[2] See note 1, p. 653.

tions to the Governor General,[1] would be the fittest for this Country in its actual state.

We might make the people entirely English by introducing the English language. This is to be done by free schools, and by ordaining that all suits in our Courts shall be carried on in English after a certain number of years.

I have never been able to perceive why the Laws of England should not be the rule for the decision in all cases of personal actions grounded upon debts, promises contracts and agreements whether of a mercantile or other nature, and also of wrongs proper to be compensated in dammages. Nor have I been able to see that it would be expedient to alter the Laws Customs and usages that have hitherto in Canada governed in all controversies respecting Titles of lands, and the tenure, descent, alienation, incumbrances, and settlements of real Estates, and the distribution of personal property of persons dying intestate.[2]

The advocates for a House of Assembly would say that this Plan stands on too narrow a bottom: nothing short (say they) of Power to Tax can ever give a spur to Trade, or rouse the indolent habitant to industry—and as England holds her Colonies for the sole purpose of extending her Commerce, the power to raise money must be granted to the people in this Province to render it of real utility to the Parent State.

Some people remark that the Canadians were not consulted before the Criminal Law of England was introduced into this Province—it was given them for their good: it may therefore (they conclude) be well left to the wisdom of a British Parliament to make all the changes in the Constitution of this Country now become necessary from the acquisition of so many thousands of His Majesty's natural born subjects as settlers among us.

The Mass of the Canadians are not yet qualified to Judge of the matter—they could not reason on the proposed change: they'll be happy under any well regulated Government, and perfectly contented whilst they remain exempted from Taxes, provided no alarm shall be sounded to rouse apprehensions touching the safety of their religion.

The Seigneurs, I presume, will ever oppose proposals tending to alter the present System, as I believe that they conceive their consequence depends on the support of that System: but of what consequence can a Canadian Seigneur be in an English *commercial* Province! He enjoys no particular privileges in the Society—He has no legal command over his tenants, nor are they in general look'd up to for their superior knowledge Their fortunes are for the most part but very slender: yet you may have seen by their late publications[3] here that they pretend to a consequence which but few (not of that class) are willing to allow them.

Among the number there's sensible well informed Gentlemen who are in estimation with all ranks of the people, but it would be as hard to root out the prejudices of an Englishman in favour of the British Constitution, as it will be to undo the predilection that a Canadian gentleman has for that form of Government which we found established here at the conquest of the Country.

A Canadian Seigneur speaks thus; "The Laws, ancient usages, and customs of our "Province would soon be abolished if the King's natural born subjects should succeed in

[1] See instructions to Lord Dorchester of 1786, article 12, p. 555.

[2] These are the distinctions made in the 12th article of the Instructions to Lord Dorchester in 1786, referred to in the previous paragraph. For the 12th article, see p. 555.

[3] In consequence of the debate in the British Parliament, of May 16th (see note p, 652) and the engagement of the Ministry to take up the question of the Canadian constitution during the following session, some of the Canadian Gentry sent a petition to the King, through Lord Dorchester, dated October 13th, 1788. See Q 38, p. 365. In this they claimed that though a number of French Canadians had joined with the English element in petitioning for a change of government, yet they did not represent "the great Proprietors of the Nation." Hence, on behalf of themselves and a number of their compatriots, from whom they claimed the power to sign the petition on their behalf, they prayed for the complete maintenance of the old French laws and institutions. This, in turn, brought out a memorial from those in favour of a change of constitution, which entered into a detailed criticism of the claims and pretentions of those who had signed the petition of October 13th. This memorial which was accompanied by several additional papers, was dated December 5th, 1788, and is given in Q 40, p. 17. Other petitions, counter petitions, and memorials followed, the controversy chiefly centering around the relative importance, numbers, wealth and enterprise of the rival factions. Most of these documents will be found in vol. Q 40. On neither side did they add anything of importance on the constitutional issue, beyond what has already been presented.

"their applications for a House of Assembly. We wish to preserve our Laws in full force "to the end of time. We have an undoubted claim to share all places of honor or profit "in the service of Government in proportion to our numbers. That we have uniformly "adhered to these demands, let our addresses of 1784[1] and 1788[2] bear testimony."

On these remarks, I will Just observe, that as the house of Representatives would be composed of a Majority of Canadian free-holders, they would not alter the Laws without being fully satisfied that they stood in need of alteration.

The King makes no distinction between a man born in Canada and one born in middlesex—we are all His Majesty's subjects—He is the fountain of honor—His Royal favor will extend to the worthy, be they new, or be they natural born subjects.

I have the honour to be

Dear Sir

Your obliged and very faithful servant.

HUGH FINLAY

Evan Nepean Esqr.

original

ORDINANCE *RE* PROCEEDINGS IN THE COURTS OF CIVIL JUDICATURE.[3]

The Quebec Gazette, Thursday May 7th 1789.

ANNO VICESIMO-NONO GEORGII TERTII REGIS.

CHAP III.

Passed 30th April 1789. J. Williams, C.L.C.

An Act to continue the Ordinances, regulating the Practice of the Law, and to provide more effectually for the Dispensation of Justice, and especially in the new Districts.

Continuation of the Two former Ordinances.

1st Be it enacted by His Excellency the Governor and the Legislative Council, and it is hereby Enacted by the Authority of the same, That the Act intituled, "An Ordinance to regulate the Proceedings in the Courts of "Civil Judicature, and to establish Trials by Juries in Actions of a Com-"mercial nature, and Personal Wrongs, to be compensated in Damages,"[4] passed in the Twenty fifth year of His Majesty's Reign, together with the Act continuing the same, with additional Regulations, passed in the Twenty seventh year of His Majesty's Reign,[5] be continued until the 30th day of April, which will be in the Year of Our Lord One Thousand seven hundred and ninety-one and no longer.

Qualification of Jurors in the Five new Districts.

2nd And better to adapt the general Provision to the present condition of the Province, lately divided into the Five new Districts of Gaspé, Luneburg, Mecklenburg, Nassau, and Hesse, Be it further Enacted by the same Authority, That it shall be no Exception or Challenge to a Juror, on any Inquest or Trial in either of the said new Districts, that he is not a Freeholder, if such Juror being otherwise qualified, shall have been for one Year the Actual Occupant of One hundred Acres of Land, under the Permission or Authority of the Government, within the District for which he is summoned, and shall have had a Certificate thereof, signed by the Governor or Commander in Chief for the Time being, or under the Signature of the

1 For the petitions of 1784, see pp. 511 and 517.

2 See note 3, p. 657.

3 Canadian Archives, Q 62A—2, p. 647. It will be observed that this Ordinance makes no substantial amendment to the general Ordinance of 1787, except in so far as it makes provision for the special conditions of the new Western Districts, and especially that of Hesse, within whose jurisdiction lay most of the western trading posts.

4 See page 529.

5 See p. 582.

Surveyor General, or Deputy Surveyor General, or any Deputy of them, or either of them.

Powers of the First Judge for the District of Hesse.

3rd And be it also Enacted by the same Authority, that until the Bench of the Court of Common Pleas for the District of Hesse shall have Three Judges duly appointed to officiate thereon, all the Powers and Authorities of the whole number shall be vested in such Person as shall have a Commission to be the First Judge thereof; any other Law, Act, or Ordinance to the contrary notwithstanding.

On Criminal Prosecutions in the new Districts, Execution to be Suspended when, &c

4th And on Account of the remoteness of the said New Districts, and for the security of the Subject, and to prevent long Imprisonments, and to lessen the public Charges in Criminal Prosecutions,—Be it further Enacted by the same Authority, that on all Trials to be had in either of the new Districts before Commissioners of Oyer and Terminer or General Gaol Delivery, when the Chief Justice of the Province may happen not to be one, the Execution of the Sentence or Judgment of the Court shall be suspended until the Pleasure of the Governor or Commander in Chief for the Time being shall be signified thereon, by Warrant under his Hand and Seal at Arms.

Copies of the Proceedings to be transmitted to the Governor.

5th And to the End that the Government may have full Information of the Proceedings of the said Courts of Criminal Jurisdiction, Be it also Enacted by the same Authority, That it shall be the Duty of the said Courts, with all convenient Speed, to transmit to the Governor for the Time being, not only copies of the Indictment, Information, or Charge, and of the Plea, and other Proceedings, in every Cause before them had, but of the written and parol Testimony read and given to the Jury, and the Scope and Substance of the Points ruled in Evidence, and of their Charge to the Jury, and Copy of the Verdict, and of every material Transaction in the Cause, together with such Observations as they may think proper to make on every such Cause and Trial, and the whole under the Signatures of the Majority of the Judges before whom every such Trial was had.

Proviso,

Provided always, and be it nevertherless Enacted by the same Authority, That it shall not be necessary to make such Report of the Proceedings, nor to stay the execution of the Sentence or Judgment in any Case where it shall not extend to Life or Limb, nor to any greater Fine, Penalty, or Forfeiture, than the Sum of Twenty five Pounds Sterling, Money of Great Britain.

Cases where Execution may be Stayed upon Fines &c adjudged.

And wherever so great a sum shall be adjudged for a Fine, Forfeiture, or Penalty, in any Court of Sessions of the Peace, to be held in either of the said new Districts, Execution shall in like manner be stayed until such Information is given to the Government, by the Major part of the Justices before whom the Trial was had, or Judgment given, as is above directed to be given by the Courts of Oyer and Terminer, and General Gaol Delivery,

Exception.

except that it shall not be necessary in such Court of Sessions to reduce to Writing all the Testimony that may be given to the Jury on Trials before them had, but that instead thereof it shall suffice to report only the main Scope and Substance thereof, and that the execution in every Case to the Amount aforesaid, given by either of the Courts of Sessions of the Peace of the said New Districts, shall also await the Signification of the Pleasure of the Governor, or Commander in Chief in the manner aforementioned.

Persons convicted of a Capital Offence in the new Districts

6th And be it also Enacted by the same Authority, That until the new Districts aforesaid shall be furnished with safe Gaols and Prisons, and as often as the Majority of the Commissioners of such Courts of Oyer and Terminer, and General Gaol Delivery, sitting therein, shall conceive it to be unsafe to continue within their District any Prisoner convicted before them of a Capital Offence, they may take course for conveying him to such other of His Majesty's Prisons as they may designate, for his being safely

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may be conveyed to any of His Majesty's Prisons.

kept to abide the Judgment of the Law; and the Sheriff and Gaoler, Bailiffs, and Officers, to whom any such Traitor or Felon shall have been delivered, shall be respectively answerable for the Prisoner, and upon his Escape shall severally be subject to all such Punishments, Pains, Penalties, and Forfeitures, as they would have respectively incurred, had such Prisoner received such Judgment upon a Conviction for the like Offence committed within the Bailiwick for which they serve.

7th And whereas the Detention of Prisoners until the sitting of the Court of King's Bench, or the sitting of Commissioners of Oyer and Terminer, and General Gaol Delivery, hath been very burthensome to the Public, and is likely to be encreased by the Insufficiency of the Gaols in the old Districts, and the total want of them in the new Districts; and it often happens that Persons committed for simple Larcencies are either acquitted, or only found guilty of Petty Larcency:

Petty Larceny extended to Twenty Shillings Sterling.

Be it therefore Enacted by the same Authority, That Simple Larcency, where the goods stolen shall not in value exceed Twenty Shillings Sterling Money of Great Britain, shall be deemed and adjudged only Petty Larcency; and whenever any Person shall stand committed to Gaol for no higher Offence than a Breach of the Peace, or Petty Larcency, and shall not within Forty-eight hours after his Commitment find Bail sufficient, in the Opinion of any One Justice of the Peace, for his Appearance at the next Sessions of the Peace, for the District where the Offence is charged to be committed, it shall be Lawful for any Three Justices of the Peace (One of whom shall be of the Quorum) to meet and cause the Offender to be convened before them, at some Public and convenient Place, and then and there, or at such other time and place to which they may adjourn to hear the charge and Defence with the Evidence for and against the Prisoner, and to determine the same,, and upon their conviction of the Guilt of the Prisoner to give Judgment against him for such Corporal Punishment (not extending to Life or Limb) as they, or the Major Part of them shall in their Discretion think adequate to the Demerit of his Offence, and that after the execution thereof the Offender shall be discharged; but if he shall not have been a stated Resident of the Province for Twelve Months preceding his Commitment and shall in Twenty Days after his Discharge be found within the said District, and shall wilfully have remained within the same, it shall be lawful for any one Justice to commit him to Prison, and for Three Justices to proceed against him in manner aforesaid, and to adjudge him to such further Correction (not extending to Life or Limb) as they in their Discretion shall think proper, unless he shall find good and sufficient sureties, in the Opinion of the Justices by whom he shall be tried, to recognize in such sum as they shall appoint for his good Behaviour for seven Years, on giving which he shall be set at Liberty, and the Recognizance be filed with the Clerk of the Peace.

Three Justices of the Peace (one being of the Quorum) empowered to hear & determine Breaches of the Peace and Petty Larcency.

Gaolers & Peace Officers to aid and assist.

And all Gaolers, Constables, and Peace Officers, when thereunto required, shall be aiding and assisting to the Justices employed in the said Service under the Penalty of Ten Shillings for every Default, to be recovered before any one Justice of the Peace in a Summary way, by Warrant of Distress and sale of the Offender's goods and Chattels, returning the overplus to the Owner, if any there be, after deducting the Penalty and the Costs, one Half of which Penalty shall belong to the Person suing for the same and the other to the Crown, and be forthwith paid by the Officer executing the said Warrant into the Hands of His Majesty's Receiver General.

8th And inasmuch as the Annual Collection of the Trade will require Yearly Circuit Courts to be held in the Northern Parts of the District of Hesse:

Terms &c for the District of Hesse, how to

Be it also Enacted by the same Authority, That it shall be lawful for the Governor or Commander in Chief for the time being, by Proclamation

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be ascertained. to be issued under the Great seal of this Province, by and with the advice of His Majesty's Council, to ascertain the Terms of such Sessions, and the Cognizance of the Causes there to be tried and adjudged, and the mode of proceeding therein, and whatever shall appear to be requisite for the effectual Administration of Civil Justice at such Circuit Courts, or the perfecting the Business thereof in any other Court, of the said, or any other District; this Act, and any other Law, Usage, or Custom to the contrary notwithstanding.

Jurisdiction of the Civil Courts in the District of Hesse, relating to Domicile.

9th And be it further Enacted by the same Authority, That in Civil Actions to be instituted in the District of Hesse, it shall not be a Ground of Exception of any kind whatsoever to oust the Courts of the said District of Jurisdiction, that the Cause of Action arose out of the same, or that by Reason of the Domicile of the Defendant it ought to be brought elsewhere, but that all the Proceedings in Causes there instituted, and the Judgment and Execution thereon, shall be deemed and adjudged to have the like Force, Effect, and Consequences, in all Respects whatsoever, as if the Cause of Action and Ground of Defence had arisen, and all Transactions relating to the same had happened within the said District of Hesse.

10th And forasmuch as, for want of a regular Magistracy, and an Establishment for the convenient Dispensation of Justice in the District of Hesse, Attempts may be made to elude the Payment of just Debts, under Pretext of the Laws of Prescription or Limitation, which presuppose a state of general Tranquillity, and the easy and free Course of Justice:

Particular Limitation of Actions in the District of Hesse.

Be it also Enacted by the same Authority, That every such Plea or Defence under the Laws of Prescription or Limitation, be adjudged to be null and void in every cause to be instituted in the Courts of the said District of Hesse, except in Actions and Cases accruing posterior to the first day of January which will be in the year of Our Lord One Thousand, seven hundred and ninety:

Proviso.

Provided always, And be it Enacted, That nothing herein contained shall be construed to revive a Demand for cause of Action arisen prior to the First Day of January, in the Year of Our Lord One Thousand seven hundred and Eighty-Six.

11th And whereas the Western Districts of Luneburg, Mecklenburg, Nassau, and Hesse are, and also the District of Gaspé probably will be, chiefly Inhabited by Persons born within the Ancient Dominions of the Crown of Great Britain.

Proofs admissable in the Five New Districts.

Be it further Enacted by the same Authority, That in Civil Causes hereafter to be tried or Adjudged and determined in either of the said New Districts, where the Title to the Freehold shall not come into Question, no Proof offered in such Cause shall be deemed to be inadmissible, that would be sufficient to sustain the Point for which the same is offered, either by the ancient or present Laws of the Province, or by the Laws of England.

Sale of Moveables in the new District

12th Where Moveables shall be taken in Execution by the Sheriff of the District of Hesse, Luneburg, Mecklenburg, or Nassau, or Gaspé, he shall cause such seizure to be published at the Church Door of the Parish immediately after Divine Service, on the First Sunday succeeding such Seizure; or if there be no Church in the Township or Parish then such seizure shall be notified by Publication or Advertisement in Writing affixed to the Door of the Court House of the District, and also at the nearest Grist Mill, as soon as may be after such Seizure; and the said Notification shall design the Day and Place where and when he means to proceed to the Sale thereof, not protracting such Sale beyound Fourteen Days from the Date of such Publication: And when Lands and Tenements shall be taken in Execution

Sale of Real Estates.

by the Sheriff of either of the said Districts, he shall advertize the Sale by Three several Publications in Writing, to be fixed at the Door of the Court House of the District, and in some ostensible Place in the Office of Clerk of

the Court whence the Execution issued, and at the nearest Grist Mill, such Notice to be renewed the First Monday of Three Successive Months preceding the Sale, which shall not take Place in less than Four Months after the Date of the First Publication.

In Personal Actions no Exception to be taken by Reason of the Domicile of the Defendant.

13th Be it further Enacted by the same authority, That in all Personal Actions to be instituted in any of Districts in this Province, it shall not be a legal Exception that the Cause of Action arose out of such District, or that by reason of the Domicile of the Defendant it ought to be brought elsewhere; but that all the Proceedings in such Actions, and the Judgments and Executions thereon, shall be deemed and adjudged to have the like Force and Effect in every Respect as if the Cause of Action and Ground of Defence had arisen, and all Transactions relating thereto had happened, in the District where the Action is instituted, any Law, Usage, or Custom to the Contrary notwithstanding.

Executions to issue from one District to the other.

14th And be it enacted by the same Authority, that the Course and Power given by the said Act, intituled, "An Ordinance to regulate the "Proceedings in the Courts of Civil Judicature, and to establish Trials by "Juries in Actions of a Commercial Nature and Personal Wrongs to be "compensated in Damages," for perfecting the Execution of a Judgment out of the District where the same was rendered, shall be pursued in every old or new District of the Province,

Appeals from the new Districts.

15th And that Parties adjudged in the said New Districts may not be deprived of their Right and Benefit of Appeal:

Be it further Enacted by the same Authority, That the giving security as heretofore used on the bringing of a Writ of Appeal, shall as effectually suspend Execution in Causes of the said Districts, as in the old Districts on the actual Production of a Writ of Appeal, such Appellant in all other Respects conforming to the Law of Appeals as it now stands, and suing out, within Twenty Days after Judgment, an Office Copy of the Proceedings in the Cause adjudged; which to prevent Delays, shall be as effectual before the Appellate Jurisdiction as if transmitted according to the present Law and Usage in Appeals from the Common Pleas Courts of the old Districts.

DORCHESTER

GRENVILLE TO DORCHESTER.[1]

(*Private and Secret.*)

WHITEHALL 20th Octr 1789.

The Right Honble
Lord Dorchester,
&c &c &c.

MY LORD,

The public dispatches[2] of this date will inform your Lordship of the intention of His Majesty's Servants, with respect to the plan to be proposed in Parliament for altering the present Constitution of Canada.—I feel that it is due to your Lordship, that I should inform you of the grounds on which this resolution has been adopted, in a more particular manner than the nature of a public dispatch appears to admit; and, for that

[1] Canadian Archives, Q 42 p. 92. William Wyndham Grenville, a cousin and favourite of Pitt, the Prime Minister, resigned the position of Speaker of the House of Commons to become Secretary of State for the Home Department, in June 1789, in succession to Lord Sydney. He was raised to the Peerage as Lord Grenville in 1790. In 1806 in coalition with Fox he became head of the famous "Ministry of all the Talents."

[2] See the despatch which follows this.

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purpose, I inclose to your Lordship in confidence, a paper containing the heads of those suggestions, on which the present measures are founded.[1] I am persuaded that it is a point of true Policy to make these Concessions at a time when they may be received as matter of favour, and when it is in Our own power to regulate and direct the manner of applying them, rather than to wait 'till they shall be extorted from us by a necessity which shall neither leave us any discretion in the form, nor any merit in the substance of what We give.

I am ignorant how far your Lordship's Opinion coincides with the ideas stated in the inclosed paper. One point I observe, and have alluded to in my public Letter, on which you have stated Objections; but I think they are such as apply to the present state of the Province, rather than to what it would be under a different form of Government.

With regard to the remainder, it would certainly give me great satisfaction if I could find the opinions which I entertain confirmed by your Lordship's experience and knowledge of the Subject.

But, in all events, I have not the smallest doubt of your Lordship's wish to co-operate in carrying into execution, in the most advantageous manner, that Plan which Parliament shall ultimately adopt, on a subject which has been so long before them; and I trust you will see the importance in this point of view, of your delaying your visit to this Country, 'till after the new Government shall have been put in motion.

There is one subject adverted to in the paper which I now enclose, of which no mention is made, either in the Bill now transmitted to your Lordship, or in the dispatch which accompanies it. What I mean is, the suggestion relative to the possibility of making such reservations of Land adjacent to all future Grants, as may secure to the Crown a certain and improving Revenue.[2]—A Measure, which, if it had been adopted when the Old Colonies were first settled, would have retained them to this hour in obedience and Loyalty. I confess that I am very particularly anxious to find myself sufficiently informed to be able to recommend to His Majesty, the adoption of some system of this nature, in His remaining Colonies, and I should therefore feel myself obliged to your Lordship, if you would consider it with attention, and state to me your Sentiments, both as to the general principle, and as to the best mode of carrying it into effect, in the different Provinces under the King's Government in North America.

Your Lordship will perceive, by the different accounts, which you will receive from Europe, that the state of France is such, as gives Us little to fear from that quarter in the present moment. The opportunity is therefore most favourable for the adoption of such measures as may tend to consolidate Our strength, and increase our resources, so as to enable Ourselves to meet any efforts that the most favorable event of the present troubles can ever enable her to make.

I am &c

W. W. GRENVILLE.

GRENVILLE TO DORCHESTER.[3]

(N° 2.) WHITEHALL 20th Oct^r 1789.

R^t Hon^ble Lord Dorchester

Quebec.

My Lord,

It having been determined to bring under the consideration of Parliament early in the next Session the propriety of making farther provision for the good government of the Province of Quebec, I enclose to your Lordship the draught of a Bill prepared for this purpose.[4]

[1] This paper does not accompany the despatch.

[2] Referring to the proposed Crown Reserves.

[3] Canadian Archives, Q 42, p. 96. This is the public despatch referred to in the foregoing letter.

[4] See below, p. 667.

His Majesty's Servants are desirous, before this Plan shall be proposed to Parliament, to avail themselves of such observations upon it as your Lordship's experience and local knowledge may suggest. It is probable that Parliament may not meet till towards the end of January next, and that there will therefore be full time for me to receive your Lordship's answer to this dispatch with such remarks as may occur to you on the proposed Bill, and with such information as may be necessary to enable me to supply those particulars of detail which are now left in blank.

Your Lordship will observe that the general object of this plan is to assimilate the Constitution of that Province to that of Great Britain, as nearly as the difference arising from the manners of the People and from the present Situation of the Province will admit.

In doing this a considerable degree of attention is due to the prejudices and habits of the French Inhabitants who compose so large a proportion of the community, and every degree of caution should be used to continue to them the enjoyment of those civil and religious Rights which were secured to them by the Capitulation of the Province, or have since been granted by the liberal and enlightened spirit of the British Government.

This consideration has had a great degree of weight in the adoption of the plan of dividing the Province of Quebec into two Districts which are to remain as at present under the administration of a Governor General, but are each to have a Lieut. Governor and a separate Legislature.

The King's Servants have not overlooked the reasons urged by your Lordship against such a separation,[1] and they feel that while Canada remained under its present form of Government great weight would have been due to those suggestions; but when the resolution was taken of establishing a Provincial Legislature, to be constituted in the manner now proposed, and to be chosen in part by the People every consideration of policy seemed to render it desirable that the great preponderance possessed in the Upper Districts by the King's antient Subjects, and in the lower by the French Canadians should have their effect and operation in separate Legislatures; rather than that these two bodies of People should be blended together in the first formation of the new Constitution, and before sufficient time has been allowed for the removal of antient prejudices, by the habit of obedience to the same Government, and by the sense of a common interest.

With respect to the intended Boundaries of these Provinces a blank is left in the Bill in order that your Lordship may, with the assistance of the Surveyor General, who is now in Quebec, consider of such a description of those Boundaries as may be sufficiently intelligible and certain, so as to leave no room for future difficulties on that subject. The division between the two Provinces is meant to be the same as is mentioned to your Lordship in Lord Sydney's Letter of 3d Septr 1788, with the alteration suggested by your Lordship in your Letter of the 8th November following.[2]

There will however be a considerable difficulty in the mode of describing the Boundary between the District of Upper Canada and the Territories of the United States. As the adhering to the Line mentioned in the Treaty with America would exclude the Posts which are still in His Majesty's Possession, and which the infraction of the Treaty on the part of America has induced His Majesty to retain, while on the other hand the including them by express words within the Limits to be established for the Province by an Act of the British Parliament would probably excite a considerable degree of resentment among the Inhabitants of the United States, and might perhaps provoke them to measures detrimental to Our Commercial Interests. Possibly the best solution for this difficulty might be to describe the Upper District by some general words such as "All the Territories &c. &c. &c. possessed by and subject to His Majesty, and being to the West or South West of the Boundary Line of Lower Canada, except such as are included within the present Boundaries of the Government of New Brunswick.

[1] See Dorchester to Sydney, November 8th, 1788, p. 654.
[2] See p. 655.

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In settling this point of the Boundaries it will also be a question, whether the Fishing Settlement in Gaspé may not with advantage be annexed to the Government of New Brunswick rather than to be left as a part of that of Lower Canada under the system now proposed to be established particularly as the local Circumstances of that District might render a representation of it in an Assembly at Quebec extremely difficult if not impracticable.

The Legislature in each of the Two Provinces is intended, as your Lordship will observe from the draught of the Bill, to consist of His Majesty represented by His Governor, or Lieutenant Governor, a Legislative Council, and a House of Assembly.

It is intended to separate the Legislative from the Executive Council, and to give to the Members of the former a right to hold their Seats during their Life and good Behaviour, provided they do not reside out of the Province, or attach themselves to any Oath of allegiance or Obedience to the United States, or to any other Foreign Power.

It is the King's farther intention to confer upon the Persons whom he shall distinguish by calling them to His Legislative Council some mark of Honour, such as a Provincial Baronetage either personal to themselves, or descendible to their Eldest Sons, in lineal Succession.

A great accession of wealth to the Provinces might probably induce His Majesty at a future period to raise the most considerable of these Persons to a higher degree of Honour, but this could certainly not be done with propriety under the present Circumstances.

The Object of these regulations is both to give to the Upper branch of the Legislature a greater degree of weight and consequence than was possessed by the Councils in the Old Colonial Governments, and to establish in the Provinces a Body of Men having that motive of attachment to the existing form of Government, which arises from the possession of personal or hereditary distinction.

It will be very necessary that great attention should be paid to the choice of those Persons who are to be placed in this situation in the first instance, and of those whom His Majesty may be advised from time to time to add to that number; and as your Lordship's long knowledge of the Province and of the Individuals who compose the higher classes of the Community, must render your Lordship more particularly competent to such a Selection, I must desire that your Lords p will consider this point with that degree of attention to which its importance entitles it, and that you will state to me the names of those Persons whom you may think fit objects of the King's favor in this respect, in each of the Two Provinces intended to be formed.

In the draft of the Bill which I enclose, a blank is left for that which is to be fixed as the smallest number of which the Councils are respectively to be composed. It is certainly desireable that this number should not be made too large in the first instance, as it would be easy for His Majesty to add to it whenever it may be found expedient, while on the other hand the calling improper Persons to the Council, in order to make up the number required by the Bill would under the system now proposed be productive of permanent inconvenience and mischief to His Majesty's Government.

Of this point also your Lordship must unquestionably be the best Judge, and I shall be anxious to learn your Sentiments upon it. My present idea, founded, however, rather on conjecture than on any satisfactory information, would be that the Legislative Council in Upper Canada should not consist of less than six Members, and in lower Canada of not less than Twelve; and that the selection of these Persons should be made with a view to encreasing the number by some addition at no very distant period, as a mark of His Majesty's favor to those Persons whose Conduct may be found to entitle them to it.

Your Lordship will also state to me for His Majesty's information, the number and names of those Persons whom you may think proper to recommend to His Majesty for Seats in the Executive Council.

It is by no means intended that the Members of the Legislative Council should be excluded from this Body, or that it should on the other hand be wholly composed of Persons of this discription. It may be adviseable that some of the Persons named to the Executive Council in one of the Districts, should also be admitted to the same distinction in the other.

GSL

In providing for the establishment of a House of Assembly in each of the Two Provinces, the first question of detail which occurs is that of the Numbers of which these Bodies should consist, and of the manner in which they should be elected; particularly with respect to the division of the Provinces into Counties or Districts, and to the relative proportion of Representation to be allowed to the Towns.

The decision of these points must necessarily depend on local knowledge: They are therefore left in blank in the Draft of the Bill, and I must desire your Lordship's opinion upon them. I am not sufficiently informed whether the present Division of the Counties would be well adapted to the Object in question, or whether a subdivision into Parishes or Districts would be more desireable.

I enclose for your Lordship's information a Paper delivered to me by M^r^. Lymburner, containing a Plan of Representation for the Province;[1] but as far as I am at all enabled to form an Opinion on the Subject, that plan appears to me to be liable to great objection. I also transmit a plan for the same purpose framed by the Board of Trade in 1765.[2]

The next point to be considered is the Qualifications of the Electors, and of the Persons to be elected in each of the Provinces. This is also in great measure a point of local detail, depending on the condition & circumstances of the different Classes of the Inhabitants of the Provinces; and on which His Majesty's Servants are therefore desirous of receiving your Lordship's Opinion. In the margin of the Bill which I now transmit, I have marked the suggestions which have been made to me on this Subject; but I do not feel myself enabled, without farther information, to form any satisfactory Opinion upon them.

The remaining Clauses of the Bill do not seem to require much particular discussion in this Letter; Your Lordship will observe by the 27^th^ Clause, that it is intended to continue all the existing Laws of the Province untill they shall be repealed or varied, by the Legislatures of the respective Provinces. An exception is however made and there is a Clause left in blank for the insertion of such Commercial Regulations, if any, which it may be thought expedient to introduce, as exceptions to the Canadian Laws, respecting Property and Civil Rights, previous to investing the Assembly in Lower Canada with a right to negative all future changes which may be proposed.

This is a point which is now under the consideration of His Majesty's Law Servants, but as it is probable that I shall receive your Lordship's answer to this dispatch before it may be necessary to come to a final decision on this Subject, I shall be glad to be furnished with any suggestions which may occur to your Lordship upon it, as likely to conduce to the advancement and security of the Commercial Interest of this Kingdom, and that of the Province as connected with it.

The Clause enabling Persons to commute the holding of their Lands into free and common Soccage is conformable to what your Lordship has recommended with respect to the Upper Districts,[3] and it seems a measure of good policy to extend the same principle to the lower parts of the Province, as far as the prejudices of the French Inhabitants will allow.

I should wish to know your Lordship's sentiments with respect to the time which might be most convenient for the commencement of this new System, supposing the Bill to be passed in the next Session of Parliament.

I am &^ca^

W. W. GRENVILLE

[1] This plan for a House of Assembly, which was drawn up in 1784, is reproduced along with the other documents of that date. See p. 510; also the notes on the same page.

[2] This date should be 1769, the correct date being given in the enclosure mentioned. See Q 42, p. 131. This is part of the Report of the Lords Commissioners for Trade and Plantations relative to the state of the Province of Quebec, dated July 20th, 1769. It is given in full at p. 263 of this volume. The portion here referred to will be found at p. 267.

[3] See Dorchester to Sydney, June 13th, 1787, p. 646, and also note 3, p. 646.

FIRST DRAUGHT OF CONSTITUTIONAL BILL.[1]

Preamble.

Whereas an Act was passed in the 14th Year of the Reign of His present Majesty, intitled, "An Act for making more effectual Provision for the Government of the Province of Quebec, in North America;"[2]

And Whereas the said Act is in many respects inapplicable to the present condition & circumstances of the said Province, and Whereas it is expedient & necessary that further provision should now be made for the good Government, & prosperity thereof;

1. May it therefore please Your Most Excellent Majesty that it may be Enacted, & be it Enacted by the King's Most Excellent Majesty, by, & with the advice & consent of the Lords Spiritual & Temporal, & Commons in this present Parliament assembled, and by the Authority of the same; That so much of the said Act as in any Manner relates to the establishment of the Boundaries of the Province of Quebec, or to the Appointment of a Council for the affairs of the said Province, or to the Power given by the said Act to the said Council, or to the Major part of them to make Ordinances for the peace, welfare, & good Government of the said Province, with the consent of His Majesty's Governor, Lt Governor, or Commander in Chief for the time being, shall be, & the same is hereby repealed.

2. And be it Enacted by the Authority aforesaid, That the several Territories, Lands, & Countries which are now subject to, & possessed by His Majesty in North America, & which are comprized within the limits of the said Province of Quebec, as formerly established by the said Act,[3] shall be, & the same are hereby divided into two Provinces, which Provinces shall be called, The Province of Upper Canada, & the Province of Lower Canada; And be it Enacted, That the Boundaries of the Province of Upper Canada shall be as follows, that is to say,[4]

And be it Enacted, That the Boundaries of the Province of Lower Canada shall be as follows, that is to say,[4]

3. And be it further Enacted, by the Authority aforesaid, That there shall be, within each of the said Provinces respectively, a Legislative Council, & a House of Assembly, to be severally composed, & constituted, in the manner herein after described;

And That in each of the said Provinces respectively, His Majesty His Heirs, & Successors, shall have power, by & with the advice, & consent of the Legislative Council, & House of Assembly of such Provinces respectively, to make Laws, for the Peace, Welfare, & Good Government thereof;

And That such Laws being passed by the Legislative Council, & House of Assembly of either of the said Provinces respectively, & being assented to by His Majesty, His Heirs, or Successors, or being assented to in His Majesty's name, by such person as His Majesty shall from time to time appoint to be His Govr or Lt Govr of such Province; or as His Majesty shall from time to time appoint to administer His Government within the

[1] Canadian Archives, Q. 42, p. 105. This draught of the Constitutional Bill accompanied the foregoing despatch, as the first enclosure.

[2] The Quebec Act. See p. 401.

[3] The vagueness of this description of the boundaries of Canada was due to the fact that Britain still retained the posts and adjoining territory to the south and west of the boundary line as given in the Treaty of 1783. As Grenville indicates in his despatch, the British Government felt a difficulty in either including or excluding these posts, hence the diplomatic description here given. The matter is again taken up in the documents which follow.

[4] This is left for Dorchester to fill in.

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Qre Governor General? (in original.) same, in the absence of such Governor, or L^t Gov^r shall be valid & binding on the Inhabitants of the Province in which the same shall have been so passed.

4. And be it further Enacted, by the Authority aforesaid, That, for the purpose of constituting such Legislative Council as aforesaid, in each of the said Provinces respectively, it shall, & may be lawful for His Majesty, His Heirs, & Successors, by, & with the advice of His Privy Council, to authorize, & direct His Gov^r or L^t Gov^r or person administring His Government, in each of the said Provinces respectively, within (3) months after the commencement of this Act, in His Majesty's name, & by an Instrument under the Great Seal of the Province, to summon to the said Legislative Council, to be established in each of the said Provinces respectively, a sufficient number of discreet, & proper persons, being not fewer than (6) to the Legislative Council for the Province of Upper Canada, & not fewer than (12) to the Legislative Council, for the Province of Lower Canada;

Q. (margin, beside "Government … within (3) months")
Q. (margin, beside "not fewer than (6)")
Q. (margin, beside "than (12)")

And that the persons so summoned shall thereby become members of the Legislative Councils to which they shall respectively, have been so summoned, and shall constitute & compose the same respectively;

And That it shall also be lawful for His Majesty, His Heirs & Successors, from time to time, by & with the advice of the Privy Council, to authorize & direct His Governor, or L^t Gov^r or person administring His Government in each of the said Provinces respectively, to summon to the said Legislative Councils of the said Provinces respectively, in like manner, such other person, or persons, as His Majesty, His Heirs, & Successors shall think fit;

And that every person who shall be so summoned to the Legislative Council of either of the said Provinces respectively, shall thereby become a member of such Legislative Council to which he shall have been so summoned.

5. Provided always, & be it Enacted by the Authority aforesaid, That no person shall be summoned to the said Legislative Council, in either of the said Provinces, who shall not be of the full age of twenty one years, & who shall not be a natural born subject of His Majesty, or an Inhabitant of one of the said Provinces, having been born within one of the said Provinces, previous to the Conquest thereof by His Majesty's Arms. Q.

6. And be it further Enacted, That every Member of each of the said Legislative Councils shall hold his Seat therein for the Term of his Life, but subject nevertheless to the Provisions herein after contained for vacating the same, in certain cases herein after specified.

7. Provided always, & be it Enacted by the Authority aforesaid; That if any Member of either of the said Legislative Councils shall leave the Province for which he was appointed a Councillor, & shall reside out of the same, for the space of one year continually, without the permission of the Governor, or L^t Governor of the Province, or of the person administring His Majesty's Government there, such permission to be signified to such Legislative Council by such Gov^r or L^t Gov^r or Person administring His Majesty's Government; Or if he should reside out of such Province for the space of two Years continually, without the permission of His Majesty, His Heirs, or Successors, signified to such Legislative Council, by the Governor, or L^t Governor, of the Province, or Person administring His Majesty's Government there;

Or if any such Member shall take any Oath of Allegiance or obedience to any foreign Prince or State, his Seat in such Council shall thereby become vacant.

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8. Provided also, & be it Enacted by the Authority aforesaid, That if any Member of either of the said Legislative Councils shall be attainted for Treason, or Felony, his Seat in such Council shall thereby become vacant.

9. And be it further Enacted, That the Governor, or L^t Gov^r of the said Provinces respectively, or the Person, or Persons administring His Majesty's Government therein respectively, shall have power, & authority from time to time, by an Instrument under the Great Seal of the Province, to constitute, appoint, & remove the Speakers of the Legislative Councils of such Provinces respectively.

10. And be it further Enacted by the Authority aforesaid, That, for the purpose of constituting such Assembly as aforesaid, in each of the said Provinces respectively,

Q. It shall, & may be lawful for His Majesty, His Heirs, & Successors, to authorize & direct His Governor, or L^t Gov^r or person administring His Government in each of the said Provinces respectively, within (3) months after the commencement of this Act, in His Majesty's name, & by an instrument under the Great Seal of such Province respectively, to summon, & call together an Assembly in & for such Province.—

11. And be it further Enacted, by the Authority aforesaid, That, for the purpose of electing the Members of such Assemblies, respectively, it shall, & may be lawful for His Majesty to authorize His Governor, or L^t Gov^r of each of the said Provinces, or the person or persons administring His Government therein respectively, to issue a Proclamation dividing such Province into Districts, or Counties, & appointing the limits thereof, so that

*Blank in MS. the said Profince of Upper Canada shall be divided into * districts, and

* ditto the said Province of Lower Canada into * districts.

And, That it shall also be lawful for His Majesty to authorize such Governor, or L^t Gov^r, or person as aforesaid, to nominate & appoint proper

Q. Returning Officer? persons to execute the office of *Sheriff*, in each of the said Districts or Counties respectively.

12. Provided always, that no person shall be obliged to execute the said Office of *Sheriff* for any longer term than one year, or oftener than once, unless it shall be otherwise provided by the Legislature of the Province—

13. And be it further Enacted, That Writs for the Election of Members to serve in the said Assemblies respectively, shall be issued by the Governor, or L^t Governor, or person or persons administring His Majesty's Government within the said Provinces respectively, within (14) days after the sealing of such instrument as aforesaid, & shall be directed to the re-

Q. Returning Officers? spective *Sheriffs* of the said Districts, or Counties; And that the form of such Writs shall be, as nearly as may be conformable to that of the Writs issued in Great Britain for the election of members to serve in Parliament; And that such Sheriffs shall, & they are hereby authorized, & required duly to execute such Writs, & and all other Writs which shall issue in pursuance of this Act, & shall be directed to them;

And That Writs shall in like manner, & form be issued for the election of members in the case of any vacancy which shall happen by the death of the person chosen, or by his being summoned to the Legislative Council, of either Province; in which case, it is hereby enacted, That the person so summoned shall no longer continue a Member of the said Houses of Assembly, or either of them;

And be it also Enacted, that in the case of any Vacancy, by the death of the person chosen, or by reason of his being so summoned as aforesaid, the Writ for the Election of a new Member in the room of the person, so

*Blank in MS. dead, or so summoned, shall be issued within * days after his death, or the date of such summons.

14. And be it further Enacted by the Authority aforesaid, That the whole number of members to be chosen in the Province of Upper Canada, shall be, * that is to say * members for each of the said Districts or Counties & * members for the Towns of *

*Blank in MS.
* ditto

15. And be it further Enacted, by the Authority aforesaid, That the whole number of members to be chosen in the Province of Lower Canada, shall be * that is to say * members for each of the said Districts or Counties, & * members for the Towns of *

* ditto
* ditto

16. And be it further Enacted, That no person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election, unless he shall then be of the full age of twenty one; and unless he shall be a natural born subject of His Majesty, or an Inhabitant of one of the said Provinces, born within one of the said Provinces, previous to the conquest thereof by His Majesty's arms.

17. And be it further Enacted, That the Members for the several districts or Counties of Upper Canada shall be chosen by the Majority of Votes of such persons qualified to vote as aforesaid, as shall severally be possessed of *

*Blank in MS. Q. (A Freehold Estate of the Yearly Value of Five Pounds ?) Q^ry 40^s

for their own use & benefit, & over & above all Rents & charges payable out of, or in respect of the same, within the said Province;

And That the Members for the several Towns within the said Province, shall be chosen by the Majority of Votes of such persons qualified to vote as aforesaid, as shall severally be possessed of any House within the said Towns, or as, having been resident within the same, for the space of — months, previous to the Election shall severally be possessed of *

*Blank in MS. Q. (The value of One Hundred Pounds ?)

in personal property within the same.

18. And be it further Enacted by the Authority aforesaid, That the Members for the several Districts or Counties of Lower Canada, shall be chosen by the Majority of Votes of such persons qualified to vote as aforesaid, as shall severally be possessed of *

*Blank in MS. Q. (Lands or Tenements being held in Freehold, or in Fief, or in Roture, & being of the Yearly Value of £5 ?)

for their own use, & benefit, & over & above all Rents & Charges, payable out of or in respect of the same, within the said Province;

And That the Members for the several Towns within the said Province, shall be chosen by the Majority of Votes of such persons as shall severally be possessed of any house within the said Towns, or as, having been resident

*Blank in MS. within the same, for the space of * months previous to the Election,
* ditto shall severally be possessed of *
Q. (The Value of One hundred Pounds?)

in personal property within the same.

19. And be it further Enacted, by the Authority aforesaid, That every Voter before he is admitted to give his Vote at any such Election, shall,
Q[re] *if required by any of the Candidates, or by the Returning Officer*, take the following Oath, which shall be administred in the English, or French Language, as the case may require —

I A.B. do declare & testify in the presence of Almighty God, that I am, to the best of my knowledge, & belief, of the full age of twenty one years, (& a natural born subject of His Majesty King George,) or, (& That I was born within His Majesty's Provinces of Upper or Lower Canada, previous to the Conquest thereof, by His Majesty's Arms.) And That I have not been polled before at this Election.

20. And be it further Enacted, by the Authority aforesaid, That it shall & may be lawful for His Majesty, His Heirs, & Successors, to authorize His Governor, or L[t] Governor of each of the said Provinces respectively, to fix the time & place of holding such Elections, & to nominate proper persons to preside at the Elections for the Towns, & to make returns of the same, subject nevertheless to such provisions as may hereafter be made in these respects by the Legislature of the Province.

21. And be it further Enacted, by the Authority aforesaid, That it shall & may be lawful for His Majesty, His Heirs, & Successors, to authorize His Governor, or L[t] Governor, of each of the said Provinces respectively, or the person, or persons administring His Government therein respectively, to fix the places & times of holding the first, & every other Session of the Legislative Council, & Assembly, of each of the said Provinces respectively, & to prorogue the same respectively from time to time, & to dissolve the same respectively by Proclamation, or Proclamations, or otherwise, whenever he shall judge it necessary.

22. Provided always, & be it Enacted by the Authority aforesaid; That the said Legislative Council & Assembly, in each of the said Provinces, shall be called together once at the least in every twelve months.

Q. And That every Assembly shall continue for (7) years from the day of the Return of the Writs for chusing the same, & no longer, subject nevertheless to be sooner dissolved by the Governor, or L[t] Gov[r] of the Province, or person administring His Majesty's Government there.

23. And be it further Enacted, by the Authority aforesaid, That all Questions which shall arise in the said Legislative Councils, or Assemblies respectively, shall be decided by the Majority of Voices;

And That, in cases where the Voices shall be equal, the Speaker of such Council or Assembly, as the case shall be, shall have a casting voice.

24. Provided always, & be it Enacted by the Authority aforesaid, That no Member either of the Legislative Council, or Assembly, in either of the said Provinces, shall be permitted to sit or to vote therein, until he shall have taken & subscribed the following Oath, either before the Gov[r] or L[t] Gov[r] of such Province, or person administring His Majesty's Government there, or before some person, or persons authorized by the said Gov[r] or L[t] Gov[r] or other person as aforesaid, to administer the same;

And That the same shall be administred in the English or French Languages, as the case shall require;

GSL

I A.B. do sincerely promise & swear that I will be faithful, & bear true Allegiance to His Majesty King George, as lawful Sovereign of the Kingdom of Great Britain, & of these Provinces thereunto belonging; And That I will defend Him to the utmost of my Power, against all traiterous conspiracies & attempts whatever which shall be made against his person, Crown & Dignity; And That I will do my utmost endeavor to disclose & make known to His Majesty, His Heirs & Successors, all treasons, & traiterous Conspiracies & attempts which I shall know to be against Him, or any of them—

And all this I do swear, without any equivocation, mental Evasion; or secret reservation, & renouncing all pardons & dispensations from any person or power whatever to the contrary.

So help me God.

25. And be it further Enacted, by the Authority aforesaid, That whenever any Bill which has been passed by the Legislative Council & by the House of Assembly in either of the said Provinces respectively, shall be presented for His Majesty's Assent to the Governor, or L^t Gov^r of such Province, or to the person administring His Majesty's Government for the same, it shall & may be lawful for such Governor, or L^t Gov^r or other person, as aforesaid, at his discretion, subject nevertheless to such instructions as he may from time to time receive from His Majesty, His Heirs, & Successors, either to declare His Majesty's Assent to such Bill, or to declare that he withholds such Assent, or that he reserves the Bill, untill His Majesty's pleasure shall be signified thereon.

26. And be it further Enacted, by the Authority aforesaid, That no such Bill, which shall be so reserved, by the Gov^r or L^t Gov^r or person administring His Majesty's Government, shall have the force of Law within the Province, in which the same shall have been so reserved, until such Gov^r or L^t Gov^r or other person as aforesaid, shall signify either by Speech or Message to the said Legislative Council, & Assembly of such Province, or by Proclamation, that such Bill has been laid before His Majesty in Council, & that His Majesty has been pleased to approve the same.

27. And be it further Enacted by the Authority aforesaid, That all Laws, Ordinances, & Usages now in force in either of the said Provinces respectively, respecting the description, quality, trial, or punishment of Offences, or respecting the decision of any matters of controversy, relative to Property, or Civil Rights, shall remain, & continue to be of the same force & effect, in each of the said Provinces respectively, as at present, except in so far as the same are expressly varied by this Act, or in so far as the same shall, or may hereafter be repealed, altered, or varied by His Majesty, His Heirs, or Successors, by & with the advice & consent of the respective Legislative Councils & Assemblies of the said Provinces respectively.

28. Provided also, & be it Enacted by the Authority aforesaid, That if any person, or persons, holding any Lands in the said Provinces or either of them, immediately of the Crown, or in any other manner than in free & common Soccage; & having a right to alienate the same, shall at any time from & after the commencement of this Act, surrender the same into the hands of His Majesty, His Heirs, or Successors, by petition to the Governor, or L^t Gov^r or other person, or persons, administring the Government of the said Provinces respectively, setting forth, that he, she, or they, is, or are desirous of holding the same in free & common Soccage, such Governor, or L^t Gov^r or other person as aforesaid, shall thereupon cause a fresh grant to be made to such person, or persons, of such Lands to be holden in free & common Soccage.

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Note[1]

The 9th Section[2] of the Quebec Act, 14. G. 3.83. is not repealed by this Bill. That Section provides, that the Regulations in in that Act (re-establishing the Canadian Laws in cases of Property,) should not extend to such Lands as the King should grant to be holden in free & common Soccage. It is presumed therefore that the English Laws will attach on these Lands, & that a special Enactment for that purpose is not necessary.

29. Provided nevertheless, & be it Enacted by the Authority aforesaid, That such surrender & Grant shall not avoid, or bar any right to any such lands so surrendered, or any interest in the same, to which any person or persons, other than the person or persons surrendering the same shall have been intitled, either in possession, remainder, or reversion, or otherwise, at the time of such surrender, but that every such right & Title shall be as valid, & effectual, as if such surrender, & Grant had never been made.

30. And whereas it has been declared by an Act passed in the 18th Year of the Reign of his present Majesty,[3] That the King, & Parliament of Great Britain will not impose any Duty, Tax or Assessment whatever, payable in any of His Majestys Colonies Provinces & Plantations in North America, or the West Indies, except only such Duties as it may be expedient to impose for the Regulation of Commerce, the net Produce of such Duties to be always applied to, & for the use of the Colony Province, or Plantation, in which the same shall be respectively levied, in such manner as other duties collected by the Authority of the respective General Courts, or General Assemblies of such Colonies, Provinces or Plantations are ordinarily paid, & applied;

And Whereas it is necessary for the general benefit of the British Empire, That such power of regulation of Commerce should continue to be exercised by His Majesty, & the Parliament of Great Britain, subject nevertheless to the condition herein before specified; with respect to the Application of any duties which may be imposed for that purpose;

Be it therefore Enacted, by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend to prevent or affect the due execution of any Law which hath been or shall be enacted by His Majesty, & the Parliament of Great Britain for establishing Regulations & Prohibitions, & for imposing, levying, & collecting Duties for the regulation of Commerce & Navigation.

31. Provided always, & be it Enacted by the Authority aforesaid, That all Duties which shall be so imposed shall be subject & liable to the sole disposition of the Legislature of the respective Provinces, as established by this Act.

32. And be it further Enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend to prevent or hinder His Majesty from appointing, erecting, & constituting such executive Council or Councils as he may judge proper, in each of the said Provinces respectively. Or from nominating, & appointing thereto from time to time, such persons as he shall think fit to compose the same, or from removing therefrom any person or persons whom he may think fit so to remove.

33. And be it further Enacted, That nothing in this Act contained shall extend, or be construed to extend, to hinder His Majesty, His Heirs, & Successors from erecting, constituting & appointing by his, or their Letters

[1] This note is simply one of explanation and interpretation by the Secretary of State.
[2] See p. 404.
[3] 18th Geo. III., cap. 12. "An act for removing all doubts and apprehensions concerning taxation by the parliament of Great Britain in any of the colonies, provinces, and plantations in North America and the West Indies;" &c. Statutes at Large, Vol. 32, p. 4.

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patent, under the Great Seal of Great Britain, such Courts of Civil, Criminal, & Ecclesiastical Jurisdiction, within, or for the said Provinces respectively, & from appointing, from time to time, such Judges, & Officers thereof, as His Majesty, His Heirs, or Successors shall think necessary or proper, for the circumstances of the said Provinces.

34. And whereas, by reason of the distance of the said Provinces from this Country & of the change to be made by this Act, in the Government thereof, it may be necessary that some interval should elapse, between the notification of this Act to the said Provinces, & the day of its Commencement,

Be it therefore Enacted, by the Authority aforesaid, That it shall & may be lawful for His Majesty, by, & with the advice of His Privy Council, to fix & declare the day of the Commencement, of this Act; Provided that such Day shall not be more than (six) months after the (25th day) of June in the Year of Our Lord, 1790.

Q.

Endorsed: Draft of a Bill.

For repealing certain parts of a Bill passed in the 14th Year of His Majesty's Reign, intitled, &c &c &c.

And for making further Provision for the Government of so much of His Majesty's Dominions in N. America, as are comprized within the limits assigned by the above mentioned Act to the said Province of Quebec.—

Copy transmitted to Lord Dorchester in Mr. Secretary Grenville's Letter N° 2.

DORCHESTER TO GRENVILLE.[1]

N° 15 QUEBEC 8th February 1790.

Sir,

I received the triplicate of your dispatch[2] No. 2. on the 20th of last month, and avail myself of the first opportunity to submit to His Majesty's Ministers such observations on the proposed Bill, as occur to me in the moment.

A The inclosed Draught[3] comprehends the corresponding alterations, engrafted upon the Bill, transmitted in your letter.

The attainment of a free course of Justice throughout every part of His Majesty's possessions, in the way least likely to give umbrage to the United States, appears to me very desirable. For this reason the Boundaries of the two proposed Provinces are described by a precise Partition line only of the Country of Canada, with the Addition of such general words, as I hoped might include the Territories subject to, or possessed by, His Majesty, to the southward of the forty fifth degree of North Latitude on the side of Lake Champlain, as well as on the side of Oswego, Niagara, Detroit, and Michilimakinac, corresponding as nearly as could be, with the idea expressed in your letter. But upon consulting the Chief Justice, relative to the operation of this description of the Boundary, I find, that he does not think it will answer the desired end.

The District of Gaspé it seems best for the present to leave annexed to the Province of Lower Canada, on account of its commercial connection with this province, and because, notwithstanding its distance, the communication of it with Quebec by water, is easier than its access to the seat of the Government of New Brunswick, in the present condition of that pro-

[1] Canadian Archives, Q. 44-1, p. 20.
[2] See p. 663.
[3] See below, p. 677.

vince; the more so, as the difficulty of a representation from that District, in an Assembly at Quebec is greatly diminished, by the opening left in the Bill for non residents of any district being elected Representatives thereof.

But the Bay of Chaleurs being subject to different Governments, particularly during the present uninhabited state of that part of New Brunswick, gives an opportunity to ill disposed persons to elude the controul of the law, to the detriment of the Fisheries, and good order; a clause to B remedy this Evil is therefore inclosed, which, if approved of, may be introduced into the Bill, as an addition to the second clause.[1]

Many advantages might result from an hereditary Legislative Council, distinguished by some mark of honor, did the condition of the country concur in supporting this dignity; but the fluctuating state of Property in these Provinces would expose all hereditary honors to fall into disregard; for the present therefore it would seem more advisable to appoint the members during life, good behaviour, and residence in the province. The number for Upper Canada to be not less than seven, and for Lower Canada not less than fifteen, to be encreased by His Majesty, as the wealth and population of the Country may require. To give them as much consequence as possible, in the present condition of the Province, they should be selected from among the men of property, where talents, integrity, and a firm attachment to the Unity of the Empire may be found. I shall take the first opportunity of communicating the names of such persons, as appear to me the fittest objects of this description.

The House of Assembly for Upper Canada might consist of not less than Sixteen, and that for Lower Canada of not less than thirty members, or nearly double in number to the Legislative Councils, to be augmented also in proportion to the Population of the Country.

As far as I can judge at present it might be advisable to give the Towns of Quebec and Montreal in Lower Canada, a representation of four members each, and two to the Town of Three Rivers, dividing the Country Parishes thereof into twenty Circles, to send one member each. In Upper Canada the four districts of Luneburg, Mecklenburg, Nassau, and Hesse, to furnish four members each, and hereafter to be subdivided into as many Circles and Towns, as their condition may require. But the present time is too short to enter into a more minute detail, for which reason it is proposed to fix only the smallest number of Members in the Bill, and to leave the actual subdivision and apportionment, necessary for an equal representation, to be ascertained by the Lieutenant Governors, with the advice of the Executive Councils, of the respective Provinces, under authority for that purpose from His Majesty.

The qualification of Electors, and persons to be Elected, as to birth, has been extended to inhabitants of the Provinces before and since the conquest, because they may be considered upon an equal footing with the natives, and to foreigners naturalized, because an accession to the Province of light and property from abroad is desirable, and not likely to injure the King's interest, under the guards proposed.

The disqualifications of Persons, attainted for Treason, and Felony, Deserters from the Militia when called out into service, and Bankrupts, until the full payment of their debts, have been added to the fourteenth clause, as a check to these evils, and from a persuasion, that persons of that description are not entitled to any political honors or consequence.

On the expediency of inserting any commercial regulations, as exceptions to the Laws of Canada, previous to investing the Assembly in Lower Canada with a right to negative all future changes, I regret that the complicated and professional nature of the subject, prevents my forming any

[1] This is the clause marked B, given below, p. 684.

other than a general opinion, that whatever regulations of this sort shall be thought proper to be adopted, should be enacted Specially, unfolded to the people, and not introduced in bulk, and by general description.

The introduction of a Soccage Tenure I think necessary in the upper country, and advisable in every part of the province, and this free of Quitrents from all, holding no more than one thousand acres, as recommended in my letter to Lord Sydney[1] N° 18. And the Quitrent, which it may be judged proper to lay on large Tracts, should be given up to the Provincial Governments for their Support, that all seeds of discord between Great Britain and her Colonies may be prevented. And independent of this important consideration perhaps the true principle of Oeconomy is rather to obviate the necessity of sending money Abroad, than to bring home any from Quitrents or Duties of any Kind.

I take for granted, that the benefits, arising to the subject, from a change of the tenure in Fief to that in Common Soccage, are meant to run throughout, as from the King to His Tenant, so from the latter to all his Under-tenants, at the time of change; Otherwise the advantages will be confined to a few, and an interest created unfriendly to the improvement of the country. Some alterations have been made in the clause relative to this point, with a view of clearing doubt upon the subject.

The commencement of the operation of the Act, as to every part, excepting only the issuing the Writs of Election, and calling together the Houses of Assembly of the respective Provinces, has been fixed at such time, as may be declared by His Majesty, with the advice of His Privy Council, not later than Six months after the notification of the Act in this Country, which I think will allow time sufficient for all necessary arrangements, as to these points.

But for the Convocation of the Assemblies a more distant period appears to be necessary, for the reasons above stated. As soon as the proper plans for their organization shall have been prepared, His Majesty may order the Assemblies to be convened, as soon as convenient, previous to the first of January, 1792, as suggested in the thirty first clause of the Bill, to which is likewise added a proposal for the temporary Government of the two Provinces in the interval, by the Lieutenant Governors, and Legislative Councils thereof, According to the model of the Quebec Bill.

Should this be approved, the Royal indulgence of returning to England for a few months on my private Affairs, would give me an opportunity to lay before His Majesty's Ministers all further explanations in my power on this subject.

Before I conclude, I have to submit to the wisdom of His Majesty's Councils, whether it may not be advisable to establish a General Government for His Majesty's Dominions upon this Continent, as well as a Governor General, whereby the united exertions of His Majesty's North American Provinces may more effectually be directed to the general interest, and to the preservation of the Unity of the Empire.[2]

C I inclose a copy of a letter from the Chief Justice, with some additional
D clauses, upon this subject,[3] prepared by him at my request, together with
E his draught of an other proposed addition to the Bill, to provide for the
F trial of foreign treason and murder,[4] as also a copy of his letter respecting
G the operation of the Boundary, as described in the Bill,[5] with his idea of
the Addition necessary to give free scope to our Courts of Justice.[6] The

[1] See Dorchester to Sydney, June 13th, 1787; given at p. 646.
[2] See below, p. 687.
[3] See below, p. 685.
[4] See below, p. 689.
[5] See Q 44-1, p. 79.
[6] See Q 44-1, p. 83.

clause above referred to under the letter B was also prepared by him at my request.

I am with much respect and esteem,

Sir,

Your most obedient, and most humble servant.

DORCHESTER

The Right Hon[l]
Mr. W. Grenville

SECOND DRAUGHT OF CONSTITUTIONAL BILL.[1]

Mem. The limits between New York and the Province of Quebec were adjusted by the Crown in Privy Council in 1766, and communications made to the Governors through the Board of Trade.[2]

1. May it therefore please Your Most Excellent Majesty that it may be enacted, and be it enacted, by the King's most Excellent Majesty, by and with the advice, and consent of the Lords spiritual and temporal and commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act, as in any manner relates to the establishment of the boundaries of the Province of Quebec or to the appointment of a Council for the affairs of the said Province or to the power given by the said Act to the said Council or to the major part of them to make Ordinances for the peace, welfare and good Government of the said Province, with the consent of His Majesty's Governor, Lieutenant Governor, or Commander in Chief for the time being, shall be, and the same is hereby repealed.

This Clause is entirely new. See also the Clause B, which is proposed by the Chief Justice, to be inserted at the end of this Clause.[3]

(2) And be it also Enacted by the Authority aforesaid, that the Country of Canada shall be, and the same is hereby, divided into two Provinces to be called the Province of Upper Canada and the Province of Lower Canada, which Provinces shall be separated by a partition line of various courses running due South from a Stone boundary fixed on the north bank of the Lake Saint Francis in a cove of the River of Saint Lawrence, West of Point au Boudet in the limit between the Township of Lancaster and the seigniory of New Longueuil to the Southernmost extent of His Majesty's Dominions and running in a Northerly direction from the aforesaid stone boundary along the Western or inland bounds of the said Seigniory of New Longueuil and of the Seigniory of Vaudreuil, according to their various courses, until it strikes the Uttawas River, thence in a direct Line to the nearest point in the centre of the navigable channel of the said river, thence ascending the middle of the navigable Channel of the said river to the Lake Temiscaming, thence through the middle of the said Lake to the most Northerly extremity thereof, and thence running due North, to the boundary of the Territory granted to the Merchants Adventurers of England trading to Hudson's Bay.[4] The Province of Upper Canada to comprehend all the Territories, Lands and Countries, which are now subject to, or possessed by His Majesty, to the westward and southward of the said Partition Line; and the Province of Lower Canada to comprehend all the Territories, Lands and Countries, which are now subject to, or possessed by His Majesty to the eastward of the said partition Line, and to the southward of the southern boundary of the said Territories granted to the Merchants Adventurers of England, trading to

[1] Canadian Archives, Q 44-1, p. 30. The first draught of the Constitutional Bill having been sent to Dorchester for his supervision and completion, we have here the second draught of the bill as amended by him, with the assistance of Chief Justice Smith.

[2] This boundary was first defined by the Proclamation of 1763, but was afterwards revised. See note 2, p. 339.

[3] See below, p. 684.

[4] This follows with some verbal changes the boundary as previously given by Dorchester. See p. 655.

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Hudson's Bay, being no part of the Government of Newfoundland or any other of His Majesty's Provinces in North America, at the time of passing this Act.[1]

3. And be it further enacted by the authority aforesaid, that there shall be, within each of the said Provinces respectively, a Legislative Council and a house of Assembly, to be severally composed and constituted, in the manner hereinafter described.

And that in each of the said Provinces, respectively, His Majesty, His Heirs, or Successors shall have power, by and with the advice and consent of the Legislative Council, and House of Assembly of such *Provinces respectively*, to make Laws for the peace, welfare, and good Government thereof; And that such laws being passed by the Legislative Council, and House of Assembly, of either of the said Provinces, *respectively* and being assented to by His Majesty, His Heirs, or Successors, or being assented to, in His Majesty's name, by such person as His Majesty shall from time to time appoint to be His Governor or Lieutenant Governor of such Province; or as His Majesty shall from time to time appoint to administer His Government within the same, in the absence of such Governor or Lieutenant Governor, shall be valid, and binding on the Inhabitants of the Province, in which the same shall have been so passed.

4. And be it further enacted by the authority aforesaid that for the purpose of constituting such Legislative Council, as aforesaid, in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by and with the advice of the Privy Council, to authorize and direct His Governor, or Lieutenant Governor or Person administering His Government in each of the said Provinces respectively, within the *time hereinafter mentioned*, in His Majesty's name and by an Instrument under the Great Seal of the Province to summon to the said Legislative Council, to be established in each of the said Provinces respectively a sufficient number of discreet and proper persons being not fewer than (7) to the Legislative Council for the Province of Upper Canada; and not fewer than (15) to the Legislative Council for the Province of Lower Canada. And that the Persons so summoned shall *thereby* become members of the Legislative Councils, to which they shall respectively have been so summoned, and shall constitute and compose the same respectively. And that it shall also be lawful for His Majesty, His Heirs or Successors from time to time, by and with the advice of the Privy Council to authorize and direct His Governor or Lieutenant Governor or Person administering His Government, in each of the said Provinces respectively to Summon to the said Legislative Councils of the said Provinces respectively in like manner, such other person or Persons, as His Majesty, His Heirs or Successors shall think fit.

[Margin: by Virtue of such Summons— (sic in MS)]

And that every Person who shall be so summoned to the Legislative Council of either of the said Provinces respectively shall *thereby* become a Member of such Legislative Council, to which he shall have been so summoned. *And the* major part of them duly assembled shall constitute a Legislative House or Council.

[Margin: by Virtue of such Summons These words are new (sic in MS)]

[1] As to the difficulty of defining the boundaries of the Canadas, see note 3, p. 667; also Dorchester to Grenville, Feb. 8th, p. 674. A suggestion of Chief Justice Smith was rather ingenious, "If to Your Lordship's description, there be an addition, importing, that by *Canada* is meant whatever the French claimed as New France, until His Majesty shall otherwise declare by Proclamation, the boundaries of the New Provinces will be what the wisdom of the Crown shall see expedient, without waiting for the intervention of Parliament; and the Colony Legislatures and Courts be unembarrassed; the French Government having made grants down to the south end of Lake George and asserting a dominion all round the Inland Great Lakes. A clause to this effect is inclosed and submitted to Your Lordship's Pleasure." Q 44-1, p. 81. The clause is as follows:—"And the Country of Canada herein before mentioned shall be deemed and adjudged to include all the Dominions of New France as claimed by the French Crown before the Conquest until His Majesty shall otherwise declare by an Instrument to be issued with the advice of His Privy Council under the Great Seal of Great Britain." Q 44-1, p. 83.

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(5) Provided always, and be it enacted by the authority aforesaid that no person shall be summoned to the said Legislative Council, in either of the said Provinces, who shall not be of the full age of twenty one years, and who shall not be a natural born subject of His Majesty, or shall not have been an Inhabitant of one of the said Provinces before and since the thirteenth day of September One thousand seven hundred and fifty nine, or else being of foreign birth, shall not have been naturalized by an Act of Parliament or a law of the Province.

These words are new. (sic in MS)

6. And be it further enacted that every member of each of the said Legislative Councils shall hold his seat therein for the term of his life, but subject nevertherless to the Provisions hereinafter contained, for vacating the same, in the cases hereinafter Specified.

7. Provided always and be it enacted by the authority aforesaid, that if any member of either of the said Legislative Councils shall leave the Province, for which he was appointed a Councillor, and shall reside out of the same, for the space of one year continually, without the permission of the Governor, or Lieutenant Governor, of the Province, or of the Person administering His Majesty's Government there, such permission to be signified to such Legislative Council, by such Governor, Lieutenant Governor, or Person administering His Majesty's Government, or if *he* shall reside out of such Province, for the space of two years continually without the permission of His Majesty, His Heirs & Successors, signified to such Legislative Council by the Governor, or Lieutenant Governor of the Province, or Person administering His Majesty's Government there; or if any such member shall take any Oath of Allegiance or obedience to any foreign Prince, or Power, his seat in such Council shall thereby become vacant.

any such member

8. Provided also, and be it enacted by the Authority aforesaid; that if any member of either of the said Legislative Councils shall be attainted for Treason, or Felony, his seat in such Council shall thereby become vacant.

9. And be it further enacted, that the Governor, or Lieutenant Governor, of the said Provinces respectively, or the Person administering His Majesty's Government therein respectively, shall have power and authority from time to time, by an instrument under the Great Seal of the said ‡ Province, respectively, ‡ to constitute, appoint and remove the Speakers of the Legislative Councils of such Provinces respectively.

‡ the words "said" & "respectively" inserted in pencil above the line.

10. And be it further enacted by the authority aforesaid, that for the purpose of constituting such Assembly as aforesaid, in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize and direct His Governor or Lieutenant Governor, or Person administering His Government in each of the said Provinces respectively, within *the time hereinafter mentioned* in His Majestys Name, and by an Instrument under the Great Seal of such Province respectively, to call together an Assembly in and for such Province.

11. And be it further enacted by the authority aforesaid, that for the purpose of electing the members of such Assemblies respectively, it shall and may be lawful for His Majesty, His Heirs, or Successors, to authorize His Governor, or Lieutenant Governor, of each of the said Provinces, or the Person, administering His Government therein respectively, to issue a Proclamation dividing such Province into districts, Counties *or circles and Towns* and appointing the limits thereof, *and fixing and declaring the number of Representatives to be chosen by each*: And that it shall also be lawful for His Majesty to authorize such Governor, or Person as aforesaid, to nominate and appoint proper Persons *under the name of Sheriffs and Bailiffs or any other name* to execute the office of *Returning Officer*, in each of the said Districts, Counties *or Circles and Towns* respectively.

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‡ sic in MS. (12th Clause omitted here‡)[1]

12. This clause new. (sic in MS) Provided always, and be it enacted by the authority aforesaid that the whole number of members to be chosen in the Province of Upper Canada shall not be less than sixteen, and that the whole number of Members to be chosen in the Province of Lower Canada shall not be less than thirty.

13. And be it further enacted that Writs for the Election of Members to serve in the said Assemblies respectively shall be issued by the Governor or Lieutenant Governor or Person administering His Majesty's Government, within the said Provinces respectively, within (14) days after the sealing of such instrument as aforesaid, and shall be directed to the respective returning Officers of the said Districts Counties, *or Circles and Towns*; And that the Form of such Writs shall be, as nearly as may be, conformable to that of the Writs, issued in Great Britain, for the Election of Members to serve in Parliament; And that such returning Officers, shall, and they are hereby authorized and required, duly to execute such Writs, and all other writs* which shall issue in pursuance of this Act, and shall be directed to them; And that writs shall in like manner and form, be issued for the Election of Members in the case of any vacancy which shall happen by the Death of the person chosen; or by his being summoned to the Legislative Council of either Province, in which case it is hereby enacted that the person so summoned shall no longer continue a member of the said houses of Assembly or either of them.

And be it also enacted, that in the case of any vacancy by the death of the person chosen, or by reason of his being so summoned as aforesaid, the writ for the election of a new member in the room of the person, so dead, new (Sic in MS.) { or so summoned, shall be issued within six days *after the same shall be* made known to the proper office for issuing such Writs of Election.

* Sic in MS. Clause 14—omitted*

14. And be it further enacted that no person shall be capable of voting *such (sic in MS.) at any election of a member to serve in such Assembly in either of the said Provinces, or of being elected at any* election *who shall not be* of the full age of twenty one years, and who shall not be a natural born subject of new (Sic in MS) { His Majesty, [or have been an Inhabitant of one of the said Provinces, before and since the thirteenth day of September One thousand, seven hundred and fifty nine, or else being of foreign birth, shall not have been naturalized by Act of Parliament, or a law of the Province.

And be it also enacted by the same authority, that no person shall be capable of voting at any election of a member to serve in such Assembly, new (Sic in MS) { in either of the said Provinces, or of being elected at any election who shall from and after the commencement of this Act, be attainted for Treason or Felony, or who shall desert from the Militia of either of the said Provinces when called out into service, or who having become bankrupt after the time aforementioned shall not thereafter have made full and entire payment of his debts.

15. And be it further enacted that the members for the several districts, Counties *or Circles*, of the said Provinces respectively, shall be chosen by the Majority of Votes of such persons qualified to vote as aforesaid, as shall new (Sic in MS) { severally be possessed of [*Lands or Tenements* within such District, County or Circle, being held in Freehold or in Fief or in Roture, or by certificate derived under the authority of the Governor and Council of the Province of Quebec,] of the yearly value of Five pounds Sterling, for their own use and benefit and over and above all rents and Charges, payable out of or in new (Sic in MS) respect of, the same [within each of the said Provinces respectively.]

[1] Clause 12 of the first draught is left out, while clause 12 of the present draught takes the place of clause 14 of the first. There are several other changes of a like nature.

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And that the Members for the several Towns within the said Provinces *respectively* shall be chosen by the majority of votes of such persons; qualified to vote as aforesaid, as shall severally be possessed of *a Dwelling house and Lot of Ground in such Town or in the Township or Parish* thereof held in like manner *as aforesaid*, or as having been resident within such town, or in the Township, or Parish thereof for the space of Twelve months next before the date of the Writ of Summons for the election, shall be possessed of the value of One hundred Pounds Sterling in personal property within the same.

16. And be it further enacted by the authority aforesaid, that every Voter, before he is admitted to give his Vote, at any such election, shall if required by any of the Candidates or by the returning Officer take the following Oath, which shall be administered in the English or French Language as the case may require:

I A.B. do declare and testify in the presence of Almighty God, that I am, to the best of my knowledge and belief, of the full age of Twenty one years (and a natural born subject of His Majesty King George) or and (that I have been an Inhabitant of one of His Majesty's Provinces of Upper or lower Canada, before and since the thirteenth day of September One thousand seven hundred and fifty nine) or (and that I have been naturalized by Act of Parliament or a law of the Province) and that I have not been polled before at this election.

[Margin: new (sic in MS)]

17. And be it further enacted by the Authority aforesaid, that it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize His Governor or Lieutenant Governor, of each of the said Provinces respectively, to fix the time and place of holding such elections, and to nominate proper persons to preside at the Elections *for the Towns*, and to make returns of the same, subject nevertheless to such Provisions, as may hereafter be made in these respects by the Legislature of the Province.

[Margin: This appears unnecessary if the former Clause stands. (sic in MS.)]

18. And be it further enacted by the authority aforesaid, that it shall and may be lawful for His Majesty, His Heirs or Successors to authorize His Governor, or Lieutenant Governor of each of the said Provinces respectively, or the person administering His Government therein respectively to fix the places and times of holding the first and every other Session of the Legislative Council and Assembly of each of the said Provinces and to prorogue the same from time to time, and to dissolve the same by Proclamation or Proclamations or otherwise whenever he shall judge it necessary.

19. Provided always, and be it enacted by the authority aforesaid, that the said Legislative Council, and Assembly, in each of the said Provinces, shall be called together once at the least in every twelve Calendar months;

And that every Assembly shall continue for (7) years from the day of the Return of the Writs for chusing the same, and no longer, subject nevertheless, to be sooner dissolved by the Governor, or Lieutenant Governor of the Province, or Person, administering His Majesty's Government there.

20. And be it further enacted, by the Authority aforesaid, that all questions which shall arise in the said Legislative Councils, or Assemblies, respectively shall be decided by the Majority of Voices.

And that in cases where the Voices shall be equal the Speaker of such Council, or Assembly, as the case shall be, shall have a casting Voice.

And that one half of the whole number of the members of each Assembly respectively, duly assembled, and attending shall constitute a House of Assembly

21. Provided always, and be it enacted by the authority aforesaid, that no member either of the Legislative Council, or Assembly, in either of the said Provinces, shall be permitted to sit, or to vote, therein, untill he shall have taken and Subscribed the following Oath, either before the Governor or Lieutenant Governor, of such Province, or Person administering His

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Majesty's Government there, or before some Person, or Persons, authorized by the said Governor or Lieutenant Governor, or other Person, as aforesaid, to administer the same ; And that the same shall be administered in the English or French, Language, as the case shall require :

I A. B. do sincerely promise and swear, that I will be faithfull, and bear true Allegiance to His Majesty, King George, as Lawful Sovereign of the Kingdom of Great Britain, and of these Provinces thereunto belonging, and that I will defend him to the utmost of my power against all traiterous conspiracies, and attempts, whatever, which shall be made against His Person, Crown, and Dignity ; and that I will do my utmost endeavour to disclose and make Known to His Majesty, His Heirs, or Successors, all treasons and traiterous conspiracies, and attempts which I shall know to be against him or any of them ; And all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations, from any Person, or Power, whatever, to the contrary.

So help me God.

22. And be it further enacted by the authority aforesaid, that whenever any Bill, which has been passed by the Legislative Council, and by the House of Assembly, in either of the said Provinces respectively, shall be presented for His Majesty's assent, to the Governor or Lieutenant Governor of such Province, or to the Person administering His Majesty's Government for the same, it shall and may be lawful for such Governor, or Lieutenant Governor, or other Person as aforesaid, at his discretion, subject nevertheless to such Instructions as he may from time to time receive from His Majesty, His Heirs, or Successors, either to declare His Majesty's Assent to such Bill, or to declare, that he withholds such assent, or that he reserves the Bill, until His Majesty's pleasure shall be signified thereon.

23. And be it further enacted by the Authority aforesaid, that no such Bill, which shall be so reserved, by the Governor, or Lieutenant Governor, or Person administering His Majesty's Government, shall have the force of Law within the Province, in which the same shall have been so reserved, until such Governor, or Lieutenant Governor, or other Person as aforesaid, shall signify either by Speech or Message to the said Legislative Council and Assembly of such Province, or by Proclamation, that such Bill has been laid before His Majesty in Council, and that His Majesty has been pleased to approve the same.

24. And be it further enacted by the authority aforesaid, that all Laws, Ordinances, and usages, now in force, in either of the said Provinces respectively, respecting the description, quality, trial or punishment of offences, or respecting the decision of any matter of controversy, relative to property, or civil rights, shall remain, and continue to be of the same force, and effect, in each of the said Provinces respectively, as at present, except in so far, as the same are expressly varied by this Act, or in so far, as the same shall, or may, hereafter be repealed, altered, or varied, by His Majesty, His Heirs, or Successors by and with the advice and consent of the respective Legislative Councils, and Assemblies of the said Provinces respectively.

25. Provided also, and be it enacted by the authority aforesaid, that if any Person, or Persons, holding any Lands in the said Provinces, or either of them, immediately of the Crown *in Fief*, or in any other manner, than in free and common Soccage, and having a right to alienate the same, shall at any time from and after the commencement of this Act, surrender the same into the hands of His Majesty, His Heirs, or Successors, by petition to the Governor, or Lieutenant Governor, or other Person administering the Government of the said Provinces respectively, setting forth, that he, she, or they, is or are, desirous of holding the same in free and common Soccage, such Governor, or Lieutenant Governor, or other Person, as afore-

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said, shall thereupon cause a fresh Grant to be made to such Person or Persons of such Lands, to be holden in free and common Soccage.

new (sic in MS) And every such change of Tenure shall work the absolute extinguishment of all Mutation, Fines, burthens and incumbrances within the Tract so surrendered, and regranted, to which the same, or any part thereof, would or might have been liable, under the laws and customs, concerning lands held in Fief or in Roture, or in any other manner than in free and common Soccage in either of the said Provinces.

26. Provided nevertheless, and be it enacted by the Authority aforesaid, that such surrender and grant, shall not avoid or Bar, any right to any such lands so Surrendered, or any interest in the same, to which any Person or Persons, other than the Person, or Persons, surrendering the same, shall have been intitled, either in possession, remainder, or reversion, or otherwise, at the time of such surrender, but that every such right and title shall be as valid, and effectual, as if such surrender and grant had never been made.

see Clause E. containing an extension proposed to be given to the Criminal Law.[1] (sic in MS)

27. And whereas it has been declared by an Act, passed in the Eighteenth Year of the Reign of His present Majesty,[2] that the King and Parliament of Great Britain will not impose any Duty, Tax, or Assessment whatever, payable in any of His Majesty's Colonies, Provinces, and Plantations, in North America, or the West Indies, except only such duties, as it may be expedient to impose for the regulation of Commerce, the Net Produce of such Duties to be always applied to and for the use of the Colony, Province or Plantation, in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts or General Assemblies, of such Colonies Provinces or Plantations, are ordinarily paid and applied.

And whereas it is necessary for the general benefit of the British Empire, that such Power of Regulation of Commerce should continue to be exercised by His Majesty, and the Parliament of Great Britain, subject nevertheless to the condition herein before Specified, with respect to the application of any Duties, which may be imposed for that purpose;

Be it therefore enacted by the authority aforesaid, that nothing in this Act contained shall extend, or be construed to extend, to prevent, or affect the due execution of any Law, which has been, or shall be enacted by His Majesty, and the Parliament of Great Britain for establishing Regulations, and Prohibitions, and for imposing, levying, and collecting, Duties for the Regulation of Commerce and Navigation.

28. Provided always and be it enacted by the authority aforesaid, that all Duties, which shall be so imposed, shall be subject, and liable, to the sole disposition of the Legislatures of the respective Provinces, as established by this Act.

29. And be it further enacted by the authority aforesaid, that nothing in this act contained, shall extend, or be construed to extend, to prevent or hinder His Majesty from appointing, erecting, and constituting, such Executive Council, or Councils, as He may judge proper, in each of the said Provinces respectively; or from nominating, and appointing thereto, from time to time, such Persons, as He shall think fit to compose the same, or from removing therefrom, any person, or persons, whom He may think fit so to remove.

30. And be it further enacted, that nothing, in this Act contained, shall extend, or be construed to extend, to hinder His Majesty, His Heirs, or Successors, from erecting, constituting, and appointing, by His, or Their letters Patent, under the Great Seal of Great Britain, such Courts of Civil,

[1] See p. 689.
[2] See note 3, p. 673.

Criminal, and Ecclesiastical, Jurisdiction, within, or for, the said Provinces, respectively, and from appointing, from time to time, such Judges, and Officers, thereof, as His Majesty, His Heirs, or Successors, shall think necessary, or proper, for the circumstances of the said Provinces.

31. And whereas by reason of the distance of the said Provinces from this Country and of the change to be made by this Act in the Government thereof, it may be necessary that some interval should elapse, between the notification of this Act to the said Provinces and the day of its commencement.

Be it therefore enacted by the authority aforesaid that it shall and may be lawful for His Majesty with the advice of His Privy Council, to fix and declare, the day of the commencement thereof—Provided that such day shall not be more than six months after the notification of the said Act, in each of the respective Provinces as to all and every part thereof, excepting only the issuing the Writs of election and calling together the houses of Assembly of each of the said Provinces respectively which it shall and may be lawful for His Majesty by and with the advice of His Privy Council to order, and direct at any time not exceeding the first day of January in the year of our Lord One thousand seven hundred and ninety two.

But to the end of a temporary provision for the welfare of the said Provinces until laws shall be made for the same by the Legislative Councils and Assemblies thereof respectively as herein before declared.

Be it also enacted by the same authority that the Governor, Lieutenant Governor or Person administering His Majesty's Government in each of the said Provinces with the Legislative Council shall and may make ordinances to be binding within the same respectively without an Assembly, to the extent and under the Conditions restraints and Limitations declared respecting the power and Authority of the Legislative Council mentioned in the Act of the fourteenth year of His Majesty's Reign—Chapter 83.[1]

D

Endorsed.

A.

In Lord Dorchesters to Mr. Grenville N° 15. of 8 February 1790.

BOUNDARY BETWEEN QUEBEC AND NEW BRUNSWICK.[2]

B. And whereas doubts have arisen concerning the Partition Line between the Province of Quebec and the Province of New Brunswick and the Coast of the Fisheries in the Gulph of Saint Lawrence is at present a part of each Province, and many inconveniences prejudicial to the due management of the said Fisheries arise from the want of a regular and competent Government, and the uninhabited condition of that part of the Coast comprehended in the said Province of New Brunswick.

Be it therefore also enacted by the authority aforesaid that it shall be lawful for His Majesty, His Heirs, or Successors, with the advice of His or their Privy Council, to declare and establish the Partition and division between the said two provinces of Lower Canada and New Brunswick by any Instrument to be issued under the Great Seal of Great Britain.

Provided always, and be it also hereby enacted that the declaration and establishment, so to be made, shall not operate to the defeating or annulling of any title or Property, already duly acquired under the authority of either of the said Provinces; And that until His Majesty, His Heirs, or

[1] The Quebec Act, see p. 401.

[2] Q 44-1, p. 59. This is clause B, draughted by Chief Justice Smith, referred to in sec. 2 of the above draught of the Constitutional Bill. See p. 677.

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Successors, shall issue such instrument and declaration, the Jurisdiction of the said Province of Lower Canada shall extend over and comprehend, all that part of the said Province of New Brunswick along the coast of the said Gulph of S^t Lawrence, which is situated to the northward of a line running through the middle of Focadie Bay to the most Westerly or extreme head thereof and thence in a Westerly direction at the distance of ten miles from the shore of the said Coast, until it strikes the boundary of the Province of Lower Canada; but that any titles to Estates in Lands within the present limits of New Brunswick shall be as valid as if this Act had never been made.

D

Endorsed—

B.

In Lord Dorchester's to Mr. Grenville No. 15. of the 8^th February 1790.

CHIEF JUSTICE SMITH TO DORCHESTER.[1]

Copy Quebec 5^th February 1790.

My Lord,

The clause inclosed for the Trial of extraprovincial offences[2] appears to me to be necessary to encourage that spirit of Enterprize, which leads our people in the Fur Trade to explore the Depths of this Continent, and has carried them almost over to the Eastern shores of the Pacific Ocean. This Commerce, elsewhere wearing out, by the encreased Population of the northeastern parts of the antient Continent, will soon become the monopoly of our nation. I have couched it in terms least likely of any that occur to me, to excite the Jealousy of our Neighbours.

The Bill with the other additions for the intended Reforms in this Country, left to be supplied by Your Lordship's local Experience,[3] greatly improves the old model of our colonial Governments; for even those called the Royal Provinces, to distinguish them from the Proprietary and chartered Republics of the Stuart Kings had Essential Faults, and the same general tendency.

Mr. Grenville's plan will most assuredly lay a foundation for two spacious populous and flourishing Provinces, and for more to grow out of them; and compose, at no remote period, a mass of Power very worthy of immediate attention.

I miss in it however, the expected Establishment to put what remains to Great Britain of Her Antient Dominions in North America, under one general direction, for the united interest and safety of every Branch of the Empire.

The Colonies of England were flourishing Colonies. It was the natural effect of the connection, the Character of the People, and the Genius of the English Constitution. Our's will be so too. But that prosperity may be their ruin. And I trust in God that the wisdom, which is dictating the new Arrangements for us, will perfect its work, by a system to prevent our repeating the Folly, that has plunged the severed parts of the Continent into poverty and distress.

Native as I am of one of the old Provinces, and early in the public service and Councils,[4] I trace the late Revolt and Rent to a remoter cause, than those to which it is ordinarily ascribed. The Truth is that the Country had outgrown its Government, and wanted the true remedy for more than half a century before the Rupture commenced—

[1] Canadian Archives, Q 44-1, p. 61. This is section C of the enclosures in Dorchester's despatch to Grenville, of Feb. 8th, 1790.

[2] Given below, see p. 689.

[3] Referring to the first draught of the Constitutional Bill, (see p. 667) with the additions and amendments made by Dorchester, and embodied in the second draught (see p. 677) which constitutes section A of the enclosures in Dorchester to Grenville, of Feb. 8th

[4] He was a native of New York and a member of the Council of that Province before the Revolution.

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To what period it continued to be practicable is problematical, and need not now be assigned.

To expect wisdom and moderation from near a score of Petty Parliaments, consisting in effect of only one of the three necessary branches of a Parliament, must, after the light brought by experience, appear to have been a very extravagant Expectation. So it has been to my view above twenty years, and I did not conceal it.

My Lord, an American Assembly, quiet in the weakness of their Infancy, could not but discover in their Elevation to Prosperity, that *themselves* were the substance, and the Governor and Board of Council mere shadows in their political Frame All America was thus, at the very outset of the Plantations, abandoned to Democracy. And it belonged to the Administrations of the days of Our Fathers to have found the Cure, in the Erection of a Power upon the Continent itself, to controul all its own little Republics, and create a Partner in the Legislation of the Empire, Capable of consulting their own safety, and the common welfare.

To be better understood by your Lordship I beg leave to put a paper under this cover, in the form of additions to the present proposed Bill, partly suggested by the necessity of something to give a real and useful significancy to Your Lordship's nominal command of more Provinces than this.[1]

As to the moment for commencing such an Establishment, that certainly must be the worst, when it shall be most wanted. And since its Erection will speak Intentions, and may give Umbrage, that will be the best time, in which that Umbrage shall excite the least apprehension.

The Debility of our Neighbours is notorious, nor can be succoured during the Distractions of France, and the consternation Spread by those Distractions through all Europe.

Here in these provinces, where it is of much consequence, to set out with good habits, what juncture can be so favourable, as when the thousands thrown into them, under Your Patronage and Direction, have their Loyalty confirmed by Resentments for their Sufferings; and so are disposed to take, and especially from Your hand, whatever the wisdom of Great Britain shall prescribe, as a Gift of her Benevolence.

As to Canada, I mean that part of it to become Lower Canada, the Biasses in it, if there are any remaining, to the Stock, from which it was severed, are become perfectly harmless, by that Body of English Loyalty Your Lordship has planted in the West— By their aversion to share in the Burdens and Miseries of the Revolted Colonies, and by the growing Discernement, that our safety and Prosperity is only to be found in the Commerce and Arms of Great Britain.

I am old enough to remember, what we in the Maritime Provinces[2] dreaded from this French Colony in the North, and what it cost to take away that dread, which confined our Population to the Edges of the Atlantic; and my mind is therefore carried, under such an Administration as the present one, into a strong Persuasion, that nothing will be neglected to enable Great Britain, so to serve herself of that Power, she already possesses here, as to check any Councils to be meditated to her Detriment, by the new Nation she has consented to create. She may do more! but this is out of my province.

So much, my Lord, You'll forgive me. I could not repress what I owed to the vindication of my Zeal, in the sacrifice of my fortune for the British Interest, and as I think still for the best Interests too of the Country of my Birth. Most of all I owed it to my Sovereign, in whose Grace I found a Relief at the end of the Storm.

[1] Lord Dorchester was appointed Governor, not only of Canada but of all the other British Provinces. See note 2, p. 550.

[2] Meaning the Maritime Provinces of the old British Colonies, now the Atlantic States.

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With a deep and grateful sense of all Your kindnesses and the honour of your request of my poor abilities, upon questions of so great magnitude and consequence.

I am, My Lord, with the highest respect and esteem
Your Lordship's
most humble and
most obedient Servant
(signed) WM. SMITH

Right Hon[ble]
Lord Dorchester D.

Endorsed.

C.

In Lord Dorchester's to Mr. Grenville N° 15.
of 8 February 1790.

PROPOSED ADDITIONS TO THE NEW CANADA BILL FOR A GENERAL GOVERNMENT.[1]

And to provide still more effectually for the Government safety and prosperity of all His Majesty's Dominions in North America, and firmly to unite the several branches of the Empire.

(1) Be it also enacted by the same authority that there shall be (with a Governor General) a Legislative Council and a General Assembly for all His Majesty's Dominions and the Provinces whereof the same do now or may hereafter consist in the parts of America to the Southward of Hudson's Bay, and in those seas to the Northward of the Bermuda or Somers Islands; And that His Majesty His Heirs and Successors shall have power by and with the advice and consent of the said Legislative Council and General Assembly to make laws for the peace, welfare and good Government of all or any of the said Provinces and Dominions: And that such Laws being passed by the said Legislative Council and General Assembly and being assented to by His Majesty, His Heirs and Successors, or being assented to in His Majesty's name by the Person appointed or to be appointed Governor General of the Provinces and Dominions aforesaid, or such person as may be appointed by the Crown to exercise the powers of Governor General on the death or absence of such Governor General, shall be valid and binding on the inhabitants of the said Dominions or such part thereof as shall for that purpose be expressed.

(2) And be it enacted by the same authority that such Legislative Council may be composed of at least * Members from each of the said Provinces to be appointed as His Majesty by His Royal Instructions to the Governor General for the time being shall authorize and direct, who shall hold their several places in the said Council for Life subject nevertherless to such terms and conditions as are herein before declared to be annexed to the trust and station of a member of the Legislative Council of either of the said Provinces of Upper & Lower Canada, and saving to His Majesty's Governor General or the Person upon whom that trust by His Majesty's appointment may devolve, power and authority from time to time by an instrument under the Great Seal to be created for the British Dominions in North America, to constitute, appoint and remove the Speaker of such Legislative Council.

* Blank in MS.

(3) And be it also enacted by the same Authority that such General Assembly may be composed of such persons as may be elected by the

[1] Canadian Archives, Q 44-1, p. 68. This is section D of the enclosures in Dorchester's despatch of Feb. 8th. It consists of the additions to the Constitutional Bill proposed by Chief Justice Smith with a view to forming a general government for the remaining British Colonies. It applies to Canada an idea already suggested by several parties, among them the Chief Justice himself, for the unification of government and administration among the older colonies.

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majority of the House of Assembly of the Province for which they serve to be manifested by Triplicate Instruments under the hand and seal of the Speaker thereof to the Governor General, the Speaker of the Legislative Council, and the Speaker of the General Assembly.

(4) And be it also enacted by the same authority that to give any Acts of the said Governor General, Legislative Council and General Assembly, the force and authority of a Law, the same shall have been assented to in the said Legislative Council by the majority of the voices forming a house of Council, according to His Majesty's appointment thereof, and shall have been assented to in the said General Assembly by such and so many Voices as will make it the Act of the majority of the Provinces, having right to be represented in the said General Assembly, and it shall be a house of General Assembly as often as there shall be assembled one or more members duly elected by each of the Assemblies of the said Provinces or of the greater number of such provinces.

(5) And be it further enacted by the same authority that it shall be lawful for His Majesty, His Heirs and Successors to authorize and direct His Governor General for the time being or the Person upon whom that trust by His Majesty's Appointment may devolve, in His Majesty's name and by an instrument under the great seal of the British Dominions in North America to summon and call together such General Assemblies in such manner as His Majesty shall be pleased to signify and command by His Royal Instructions to such Governor General.

(6) And be it also enacted by the same authority that the Governor General under such instructions as he may have received from His Majesty may assemble the said Legislative Council and General Assembly where, and prorogue and dissolve them, when and as often as he shall judge it necessary, Provided always and be it enacted that they shall be called together one at least in every two years, and continue to have the right of sitting seven years from the Teste or day of the process or summons for their election unless they shall be sooner dissolved by the Authority aforementioned. But no Member either of the said Legislative Council or General Assembly shall be permitted to sit or vote in the General Legislature untill he shall have taken such Oath as hereinbefore directed to be taken by the Members of the Legislative Council and Assembly of Upper or Lower Canada, or not being an Inhabitant of either of the said Provinces last mentioned such other oaths and qualifications as are taken to become a Member of the Parliament of Great Britain as by His Majesty's Instructions shall be directed and required.

(7) And be it also enacted by the same Authority that whenever any Bill which has been passed by the said Legislative Council and by the said General Assembly shall be presented for His Majesty's Assent to the Governor General for the time being or the Person exercising that trust under His Majesty's Authority, it shall and may be lawful for such Governor General or other person exercising the said trust, at his discretion, subject nevertherless to such Instructions as he may from time to time receive from His Majesty His Heirs and Successors, either to declare His Majesty's Assent to such Bill, or to declare that he withholds such assent, or that he reserves the said bill untill His Majesty's Pleasure shall be signified thereon. And no Bill so to be presented and not assented to in manner aforesaid shall have the force of a Law.

(8) And be it further Enacted by the same Authority that nothing in this Act contained shall be construed to prevent His Majesty from appointing, erecting, and constituting such general and executive Council and Councils as he may judge proper for the said Provinces and Dominions in general, and Any other Office, in His Royal Judgment and discretion requi-

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site for the said general Government; or from nominating and appointing thereto from time to time, such persons as he shall think fit to compose the same Executive Council, or to execute such offices or from removing therefrom any person or Persons whom he may think fit to remove.

(9.) And be it also Enacted by the same Authority that it shall and may be lawful for His Majesty to give Authority to his said Governor General, or the person exercising that trust, on his arrival in either of the provinces within his commission, to assume the authority and to perform all the duties and functions which the Lieutenant Governor thereof, might exercise and perform; and the powers and authority of such Lieutenant Governor shall be suspended & so continue during the time of the Governor General's being within the same province; and that it shall also be lawful for His Majesty to give to the said Governor General for the time being, tho' absent in some other province of His General Government, authority respecting any act of any of the Provinces of such nature and tendency as His Majesty may see cause by His Royal Instruction to describe, to suspend the execution of such Act until His Majesty's Pleasure shall be signified respecting the same; to which end it shall be the duty of the person administering the Government in every Province subject to the Governor General's Authority, to transmit to him a copy of every bill to which he has assented as soon as possible after the enacting of the same into a law; and shall upon the suspension thereof by the Governor General immediately cause the same to be made known by proclamation under the great seal of his Province, in the manner most effectual for making the same universally known to the Inhabitants of the same Province, and all others whom the same may concern.

(10.) And be it further enacted by the Authority aforesaid, that nothing in this Act contained shall be interpreted to derogate from the rights and Prerogatives of the Crown for the due exercise of the Royal and executive authority over all or any of the said Provinces; or to derogate from the Legislative Sovereignty and Supremacy of the Crown and Parliament of Great Britain; but the Acts of Legislation of either of the said Provinces, as well as the Acts of the Governor General and the Legislative Council and General Assembly so to be made, shall be subject to the Royal dis-allowance as exercised heretofore respecting the laws of any of the British Provinces, and the said Dominions and all the Provinces into which they may be hereafter divided shall continue and remain to be governed by the Crown and Parliament of Great Britain as the supreme Legislature of the whole British Empire.

Endorsed. D. D.

In Lord Dorchesters to Mr. Grenville N° 15
of 8th February 1790.

CLAUSE *RE* TRIAL OF CRIMINAL OFFENCES.[1]

And whereas it may so happen that Offences may be committed, which as the Law now stands, may be only triable and punishable in England by virtue of divers Statutes, as Treason or Murder perpetrated in foreign parts, and yet the Offender may be taken and imprisoned for such offence, in one or other of His Majesty's Provinces in America.

Be it therefore enacted by the Authority aforesaid that such offender may be tried and punished, in such of His Majesty's Provinces where he may happen to be imprisoned, and for that purpose may be proceeded against before Commissioners of Oyer and Terminer constituted from time to time

[1] This is clause E, (Q 44-1, p. 77) drawn up by Chief Justice Smith, and referred to in Dorchester to Grenville p. 676, as also in Smith to Dorchester, p. 685.

under the Great Seal of the Province, as nearly as may be according to the Course in the realm of England for the Trial of Offences of the like nature.

Endorsed. .E. D.

In Lord Dorchester's to Mr. Grenville N° 15
of 8th February 1790.

GRENVILLE TO DORCHESTER.[1]

N°. 25. Whitehall 5th June 1790.

The Right Honorable }
Lord Dorchester }

My Lord,

Your Lordship's dispatch[2] N° 15 was not received here till the 18th of April. The Session of Parliament was then so far advanced that it was not thought proper to bring forward at that time the proposed bill for regulating the Government of Quebec, especially as several of the observations stated by Your Lordship on the subject were of a nature to require previous consideration, and as it then appeared probable that I might receive from Your Lordship any further suggestions which might occur on a fuller examination of the plan and that I might perhaps be able to avail myself of Your Lordship's personal assistance in the course of the summer.

The discussions which have arisen with Spain[3] having induced His Majesty to direct me to state to Your Lordship the necessity of your continuing for the present in Quebec, and it being uncertain whether even in the Supposition of an amicable adjustment of that business, it could be terminated soon enough to allow of my transmitting to Your Lordship this season His Majesty's permission to return to England, I have thought it right to state to Your Lordship in this manner some particulars which have occurred to me on the subject of Your Lordship's dispatch above mentioned and its inclosures.

There will certainly be considerable difficulty in any mode of describing the boundaries of Upper Canada 'till some precise adjustment is made with the United States, relative to those points in which the Treaty of 1783 has not been carried into execution by the contracting parties. This subject is now under the consideration of Government, and it is not improbable that some person may be sent from this Country with powers to settle those points. But if such settlement shall not have taken place previous to the time of bringing forward the Quebec bill in the next Session of Parliament, I am inclined to believe the most adviseable mode of avoiding the difficulty in question will be that of leaving the Boundaries to be fixed by His Majesty.

This would enable the King to provide for the point to which the clause B[4] inclosed in Your Lordship's dispatch relates—If any other mode should be adopted the object of that clause will be attended to.

No material objection occurs to me to the numbers proposed by Your Lordship for the first formation of the Legislative Councils or Houses of Assembly in the two Provinces, especially as I must necessarily rely so much upon Your Lordship's judgment in that respect—If I were to wish any alteration it might perhaps be to lessen the numbers of which the Legislative Councils are to consist in the first instance—and this with a view to having the means of greater selection with respect to the persons to be first

[1] Canadian Archives, Q 44-1, p. 152. To follow the discussion of the various sections of the bill requires a reference to the first and second draughts of it. See pp. 667 and 677.

[2] The despatch of Feb. 8th, enclosing, among other papers, the second draught of the Constitutional Bill. See p. 674.

[3] The difficulty with Spain arose over the capture of certain British vessels at Nootka Sound, on the north west coast of America. It was feared for a time that war would be the result, with the possibility of the United States being drawn into it at the instance of Spain, owing to the difficulties about the western posts, &c.

[4] The clause drawn up by the Chief Justice relative to the boundaries between Quebec and New Brunswick. See p. 684.

named, on the characters and conduct of whom so much depends. The mode suggested, for ascertaining the circles, or districts for elections appears unobjectionable.

More difficulty seems to occur with respect to the proposed extension of the qualification of Eligibility to persons born under the dominion of foreign princes, and not within those provinces which have been conquered by His Majesty's arms. The naturalization bills in Great Britain always contain a clause of exclusion from Seats in either House of Parliament, and there seems to be great objection to giving any similar right by provincial naturalization. Unless therefore I should hear from Your Lordship that there are any persons whom in Your Lordship's opinion it would in the present moment be particularly desirable not to exclude and who would not fall under the description of Eligibility as it before stood I incline to think it should not be altered.

Some doubt occurs to me whether it would be desireable to extend the disqualifying clauses in the manner proposed by Your Lordship. It is true unquestionably that persons of the descriptions mentioned are not entitled to political honours or consequence, but the means of discouraging them within the province seems to be a consideration rather of local provincial regulation, and not naturally to form a part of a law on which the Constitution of the Province is to be grounded.

After much enquiry and consideration, and after receiving the opinions of professional men upon the subject it does not appear to me to be practicable to introduce into the proposed bill any considerable or material articles of Commercial Law, and the insertion of those of smaller importance would not be desireable. Unless therefore I should receive any further suggestion on that subject from Your Lordship, it is my present intention not to add to the bill any clause of that nature, although I cannot but confess that I have taken this resolution with considerable reluctance, and apprehension of the possible effect which it may have on the British Commerce.

The difficulties of which the Merchants have complained with respect to the Commercial Laws of Canada and which certainly by no means appear to me to have been entirely unfounded, though in some instances, I think they have been exagerated, seem nevertherless rather to have arisen from the uncertainty of those Laws than from the positive defects of any one particular system. That uncertainty might perhaps be removed immediately by provisions to be adopted by the local Legislature of the Province, and it must ultimately be done away by an uniform and consistent administration of Justice which it will be the duty of His Majesty's Ministers to secure to the King's subjects by such means as will under the proposed system be left in His Majesty's discretion. I am not quite satisfied that this will be fully sufficient to obviate the objection drawn from the prejudices of those persons of whom the Legislature of Lower Canada must in great measure be composed, and from the natural operation of those prejudices in questions of Commercial Laws. But the difficulty appears to me unavoidable and not to be of sufficient weight to prevent the adoption of the proposed system if right in other respects.

It is certainly very desireable that the benefits of an exchange from tenure in fief to common Socage should not be confined to the persons holding immediately of the King but should be extended to their under-tenants. But it seems necessary that some mode of compensation should be settled by which the person holding of the King might receive an adequate return for the value of the rights which he would lose by such conversion, unless it is understood that the benefit derived to the tenant in capite from the extinguishing the feudal rights of the King, would in all cases be greater than the loss incident to him upon the surrender of his rights over his under-tenants. This as far as I understand the present system of tenures in Canada, I imagine would not be the case, and it would therefore be necessary to make some provision for this difficulty.

Whether it is possible to establish any general rule or fixed proportion of compensation to be made by the under-tenant to his Lord in lieu of the feudal services and payments to which he is now subject, or whether it would be necessary in each distinct case to have recourse to some mode of appraisement or valuation, and what mode could be best adapted for that purpose, I am not sufficiently informed to decide, and I must therefore request that Your Lordship will with the assistance of His Majesty's Chief

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Justice, and any other Persons whom you may think competent to advise you upon it, give a particular attention to this point: and transmit to me such a clause as shall be judged effectual for the object which I have mentioned. In framing such a clause attention will of course be paid by the persons drawing it to the nature and operation of the different clauses in the Stat: 12 Car. 2 Cap. 24, by which Socage holding was made general in this Kingdom. If any compensation is to be paid by the under-tenant to his Lord on such Conversion, it seems necessary to provide that the Conversion shall not take place but by mutual consent.

Proper attention will be paid to Your Lordship's suggestions with respect to the Commencement of the Bill, but the intermediate establishment of a separate Government in Upper Canada according to the form of that created by the present Quebec Act does not appear adviseable.

The formation of a general Legislative Government for all the King's Provinces in America,[1] is a point which has been under Consideration, but I think it liable to considerable objection—The principle of uniting the executive Government, has already been acted upon, and is one which I think of material importance to the British Interests in America.

The other Clauses suggested by the Chief Justice will be considered by His Majesty's Law Servants.

I am &c. &c.

W. W. Grenville

DUNDAS TO DORCHESTER.[2]

(No. 2)

Whitehall, 16th September 1791.

The Right Honble
Lord Dorchester
My Lord,

In the letters which were written to your Lordship by my Predecessor, Lord Grenville, I find you were long ago fully informed by his Lordship of His Majesty's intention of dividing His Province of Quebec into two separate Governments, to be called the Province of Upper Canada, and the Province of Lower Canada, and of Regulations which were proposed to be made in consequence, for the better Government of that part of His Majesty's Dominions. In pursuance of that intention I am now to inform your Lordship that a Bill was introduced into Parliament and passed during the last session, intituled "An Act to repeal certain parts of an Act passed in the Fourteenth year of His Majesty's Reign intituled An Act for making more effectual Provision for the Government of the Province of Quebec in North America; and to make further provision for the Government of the said Province," a Copy of which I inclose together with a Commission under the Great Seal, revoking your former Commission of Governor of the Province of Quebec, and vesting you with the Chief Government of the two Provinces beforementioned and also Instructions under the Royal Sign Manual applicable to the Regulations which His Majesty under the Act, has thought fit to establish.

In framing the Instructions to Your Lordship with respect to the Quorums of the Legislative Councillors and of the Members of the Assembly for Lower Canada, some difficulties occurred in fixing on the number which might be proper to compose such Quorums, and on a consideration of the subject, it was rather thought adviseable that the number of which such Quorums should consist, should be left to those Bodies to determine. The mode which His Majesty's Servants recommend for adjusting this point,

[1] Referring to the proposed clause on that subject submitted by the Chief Justice. See p. 687.

[2] Canadian Archives, Q 52, p. 213. Henry Dundas was a noted politician of the period, who had boxed the compass among the political parties of the time and finally attached himself to Pitt, with whom he gained special favour. After filling several important offices, he became Secretary of State for the Home Department, on June 8th, 1791. In 1802 he was raised to the peerage as Viscount Melville and Baron Dunira.

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is either by an Act of the Legislature, or what may perhaps equally answer the purpose, that of making the regulation now to be fixed upon, a standing order of each of the two Houses respectively, and I have it in Command to desire that your Lordship will on the first meeting, recommend this object to their consideration, and likewise the forming other such Rules or standing Orders for regulating the Form of proceeding in the Council & Assembly. respectively, as may be most conducive to the regular dispatch of Business.

Your Lordship will find on a perusal of the Act that the number of Representatives of which the Assembly of Lower Canada was originally intended to consist has been considerably increased. This measure will render a new Distribution necessary instead of that which was proposed by Your Lordship in your letter to Lord Grenville[1] No. 15, and I wish Your Lordship particularly to consider whether for the sake of convenience and dispatch in deciding upon Elections and preventing the inconvenience of too great a number of Electors, the Towns of Quebec and Montreal might not for that purpose be divided into two separate and distinct Districts, and that these Towns should return Four Members each, by electing Two in each District. your Lordship will see by the Copy of a Paper delivered to me by M[r] Lymburner,[2] that he proposes that each of the Towns of Quebec and Montreal should chuse seven Members each, but that arrangement His Majesty's Servants entirely disapprove of, and would be sorry that such a distribution should on any account take place.

When your Lordship shall have considered this subject maturely, and have arranged your Plan for the Representatives to be chosen by each of the Towns and Circles respectively, you will as soon as conveniently may be issue your Proclamation accordingly.

According to the best opinions which I can obtain it seems to me adviseable that excepting in the instances of Trois Rivieres St. John & William Henry, each of the other Circles and Towns or Townships in Lower Canada should elect one Representative, and as the Extent of the several Towns from the introduction of new Settlers and from the probable increase of Population will hereafter be likely to be enlarged, it seems to be desireable that for the same purpose of preventing too great a number of Electors for any place, that limits should now be fixed within which the Electors for the Representatives of the Towns should be resident, and whenever the number of new Inhabitants resident within the limits adjacent and possessed of qualifications to vote for Towns or Townships shall encrease so as to render it expedient that they should be represented in the House of Assembly, a new Town or Township shall in like manner be established within fixed limits for the purpose of separately electing an additional Representative in the House of Assembly, and so on from time to time as often as the occasion may require.

Your Lordship has I have no doubt been informed of the disputes & disagreements which have at times taken place between the Councils & Assemblies of the different Colonies respecting the Right claimed by the latter that all Bills whatsoever for granting Money should originate with them. The principle itself as far as it relates to any question of imposing burthens upon the Subject is so consistent with the Spirit of Our Constitution that it ought not to be resisted at the same time it would be prudent, if possible, to avoid any unnecessary discussion of its application in minute cases, & above all that it should not be so extended by overstrained refinements as to produce embarrassment & perplexity in the progress of Public business.

As there does not at present appear to be sufficient provision for the support of the Protestant Clergy either in Upper Canada or in Lower Canada, the collection of Tythes has under the Act of the present year been suffered to continue; But your Lordship will understand that it is not wished to continue this burthen longer than is necessary for the competent provision of the Clergy:[3] If therefore the Proprietors of Lands liable to the payment of Tythes shall be induced to concur with your Lordships

[1] See p. 674.
[2] The paper mentioned follows this despatch, and is given in Q 52, p. 219.
[3] The following extracts from a letter from the Society for the Propagation of the Gospel, addressed to Lord Sydney, will indicate the influences at work to secure from the Government an adequate provision for the Protestant religion. "The Society for Propagation of the Gospel in foreign parts, having under

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recommendation in providing a sufficient fund for clearing the reserved Lands and for building Parsonage Houses on the several Parsonages which may be endowed under the Act of the last Session of Parliament, and at the same time provide an intermediate fund for the maintenance of the Clergy during the period that will be required for the purpose of so clearing these reserved Lands, the obligation of Tythes may then cease. I have thought it necessary to explain this subject minutely to your Lordship, that by making it understood among the Proprietors of these Lands they may perceive the means which are in their own power to relieve themselves from a burthen which is naturally irksome to them.

By the Act of the last Session the duties payable to His Majesty under the Act of the 14th year of His Majesty's Reign, Cap. 88,[1] on Articles imported into the Province of Quebec are suffered to remain upon their former footing; but I have it in Command to intimate to Your Lordship that as soon as the Legislatures of the Provinces of Upper Canada & Lower Canada shall have passed Laws laying the same or other Duties to an equal amount to those which become payable under the Acts, & such Act shall have obtained the Royal Assent, His Majesty's Ministers will be ready to propose to Parliament a Repeal of the Act abovementioned.

THE CONSTITUTIONAL ACT OF 1791.[2]

Anno Tricesimo Primo

GEORGII III. REGIS.

CAP. XXXI.

An Act to repeal certain Parts of an Act, passed in the Fourteenth Year of His Majesty's Reign, intituled, *An Act for making more effectual Provision for the Government of the Province of* Quebec, *in* North America; and to make further Provision for the Government of the said Province.

Preamble.

14 *Geo.* III, Cap. 83, recited.

Whereas an Act was passed in the Fourteenth Year of the Reign of His present Majesty, intituled, *An Act for making more effectual Provision for the Government of the Province of* Quebec *in* North America: And whereas the said Act is in many Respects inapplicable to the present Condition and Circumstances of the said Province: And whereas it is expedient and necessary that further Provision should now be made for the good

their consideration the state of their missions in North America, and of the church of England, in such parts of it as remain under the dominion of His Majesty, are anxious to be informed what steps have been taken by Government since the last peace, towards forming a church establishment therein, and making a permanent provision for its ministers. They have learned with much satisfaction from the communication Your Lordship was pleased to make to them, that instructions have been given to the Governor of New Brunswick, to appropriate tracts of lands in the parishes to be laid out in that province, for glebes for the ministers to be appointed to such parishes, and other smaller tracts for schoolmasters, and that a salary of 75l. per annum is intended to be allowed in the estimate to be granted by Parliament to each of four ministers of the church of England within that province; * * * * The Society also understand that similar instructions have been given to the Governors of Quebec and Nova Scotia, to appropriate tracts of lands for glebes, and smaller portions for schoolmasters, in all the districts laid out for the accommodation of the Loyalists in those provinces, and they request to be informed how far the Governors have complied with these instructions; in what places the emigrants are seated; whether they have carried any clergy of the church of England with them; whether any assignments have been made for the subsistence of such clergymen, upon the revenue of Quebec, or upon the quit rents of Nova Scotia, or any other fund appropriated for the erection of churches and parsonage houses?" Given in Knox's "Extra Official State Papers," &c. Vol. I, Appendix No. IV.

[1] See p. 406.

[2] The text of this Act, like that of the Quebec Act, is taken from the original folio issue of the Act by the King's Printer.

The debates in the British Parliament in connection with the passing of this Act will be found in Hansard, vol. 28, pp. 504, 626 and 1376, and in vol. 29, pp. 104, 359, 655.

A very full report of the debates on the bill, during the session of 1790-1791, will also be found in "The History and Proceedings of the Lords and Commons during the first Session of the seventeenth Parliament of Great Britain." London, 1791. pp. 438 and 497.

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Government and Prosperity thereof: May it therefore please Your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That so much of the said Act as in any Manner relates to the Appointment of a Council for the Affairs of the said Province of *Quebec*, or to the Power given by the said Act to the said Council, or to the major Part of them, to make Ordinances for the Peace, Welfare, and good Government of the said Province, with the Consent of His Majesty's Governor, Lieutenant Governor, or Commander in Chief for the Time being, shall be, and the same is hereby repealed.

So much of recited Act as relates to the Appointment of a Council for *Quebec*, or its Powers, repealed.

II. And whereas His Majesty has been pleased to signify, by His Message to both Houses of Parliament, His Royal Intention to divide His Province of *Quebec* into Two separate Provinces, to be called *The Province of Upper Canada*, and *The Province of Lower Canada*; be it enacted by the Authority aforesaid, That there shall be within each of the said Provinces respectively a Legislative Council, and an Assembly, to be severally composed and constituted in the Manner herein-after described; and that in each of the said Provinces respectively His Majesty, His Heirs or Successors, shall have Power, during the Continuance of this Act, by and with the Advice and Consent of the Legislative Council and Assembly of such Provinces respectively, to make Laws for the Peace, Welfare, and good Government thereof, such Laws not being repugnant to this Act; and that all such Laws, being passed by the Legislative Council and Assembly of either of the said Provinces respectively, and assented to by His Majesty, His Heirs or Successors, or assented to in His Majesty's Name, by such Person as His Majesty, His Heirs or Successors, shall from Time to Time appoint to be the Governor, or Lieutenant Governor, of such Province, or by such Person as His Majesty, His Heirs or Successors, shall from Time to Time appoint to administer the Government within the same, shall be, and the same are hereby declared to be, by virtue of and under the Authority of this Act, valid and binding to all Intents and Purposes whatever, within the Province in which the same shall have been so passed.

Within each of the intended Provinces a Legislative Council and Assembly to be constituted, by whose Advice His Majesty may make Laws for the Government of the Province.

III. And be it further enacted by the Authority aforesaid, That for the Purpose of constituting such Legislative Council as aforesaid in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively, within the Time herein-after mentioned, in His Majesty's Name, and by an Instrument under the Great Seal of such Province, to summon to the said Legislative Council, to be established in each of the said Provinces respectively, a sufficient Number of discreet and proper Persons, being not fewer than Seven to the Legislative Council for the Province of *Upper Canada*, and not fewer than Fifteen to the Legislative Council for the Province of *Lower Canada*; and that it shall also be lawful for His Majesty, His Heirs or Successors, from Time to Time, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person adminstering the Government in each of the said Provinces respectively, to summon to the Legislative Council of such Province, in like Manner, such other Person or Persons as His Majesty, His Heirs or Successors, shall think fit; and that every Person who shall be so summoned to the Legislative Council of either of the said Provinces respectively, shall thereby become a Member of such Legislative Council to which he shall have been so summoned.

His Majesty may authorize the Governor, or Lieutenant Governor, of each Province, to summon Members to the Legislative Council.

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No Person under 21 Years of Age, *etc.* to be summoned.

IV. Provided always, and be it enacted by the Authority aforesaid, That no Person shall be summoned to the said Legislative Council, in either of the said Provinces, who shall not be of the full Age of Twenty-one Years, and a natural-born Subject of His Majesty, or a Subject of His Majesty naturalized by Act of the *British* Parliament, or a Subject of His Majesty, having become such by the Conquest and Cession of the Province of *Canada*.

Members to hold their Seats for Life.

V. And be it further enacted by the Authority aforesaid, That every Member of each of the said Legislative Councils shall hold his Seat therein for the Term of his Life, but subject nevertheless to the Provisions herein-after contained for vacating the same, in the Cases herein-after specified.

His Majesty may annex to Hereditary Titles of Honour, the Right of being summoned to the Legislative Council.

VI. And be it further enacted by the Authority aforesaid, That whenever His Majesty, His Heirs or Successors, shall think proper to confer upon any Subject of the Crown of *Great Britain*, by Letters Patent under the Great Seal of either of the said Provinces, any Hereditary Title of Honour, Rank, or Dignity of such Province, descendible according to any Course of Descent limited in such Letters Patent, it shall and may be lawful for His Majesty, His Heirs or Successors, to annex thereto, by the said Letters Patent, if His Majesty, His Heirs or Successors, shall so think fit, an Hereditary Right of being summoned to the Legislative Council of such Province, descendible according to the Course of Descent so limited with respect to such Title, Rank, or Dignity; and that every Person on whom such Right shall be so conferred, or to whom such Right shall severally so descend, shall thereupon be entitled to demand from the Governor, Lieutenant Governor, or Person administering the Government of such Province, his Writ of Summons to such Legislative Council, at any Time after he shall have attained the Age of Twenty-one Years, subject nevertheless to the Provisions herein-after contained.

Such descendible Right forfeited, and

VII. Provided always, and be it further enacted by the Authority aforesaid, That when and so often as any Person to whom such Hereditary Right shall have descended shall, without the Permission of His Majesty, His Heirs or Successors, signified to the Legislative Council of the Province by the Governor, Lieutenant Governor, or Person administering the Government there, have been absent from the said Province for the Space of Four Years continually, at any Time between the Date of his succeeding to such Right and the Time of his applying for such Writ of Summons, if he shall have been of the Age of Twenty-one Years or upwards at the Time of his so succeeding, or at any Time between the Date of his attaining the said Age and the Time of his so applying, if he shall not have been of the said Age at the Time of his so succeeding; and also when and so often as any such Person shall at any Time, before his applying for such Writ of Summons, have taken any Oath of Allegiance or Obedience to any Foreign Prince or Power, in every such Case such Person shall not be entitled to receive any Writ of Summons to the Legislative Council by virtue of such Hereditary Right, unless His Majesty, His Heirs or Successors, shall at any Time think fit, by Instrument under His or their Sign Manual, to direct that such Person shall be summoned to the said Council; and the Governor, Lieutenant Governor, or Person administering the Government in the said Provinces respectively, is hereby authorized and required, previous to granting such Writ of Summons to any Person so applying for the same, to interrogate such Person upon Oath touching the said several Particulars, before such executive Council as shall have been appointed by His Majesty, His Heirs or Successors, within such Province, for the Affairs thereof.

Seats in Council vacated in certain Cases.

VIII. Provided also, and be it further enacted by the Authority aforesaid, That if any Member of the Legislative Councils of either of the said Provinces respectively shall leave such Province, and shall reside out of the same for the Space of Four Years continually, without the Permission of

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His Majesty, His Heirs or Successors, signified to such Legislative Council by the Governor or Lieutenant Governor, or Person administering His Majesty's Government there, or for the Space of Two Years continually, without the like Permission, or the Permission of the Governor, Lieutenant Governor, or Person administering the Government of such Province, signified to such Legislative Council in the Manner aforesaid; or if any such Member shall take any Oath of Allegiance or Obedience to any Foreign Prince or Power; his Seat in such Council shall thereby become vacant.

Hereditary Rights and Seats so forfeited or vacated, to remain suspended during the Lives of the Parties, but on their Deaths to go to the Persons next intitled thereto.

IX. Provided also, and be it further enacted by the Authority aforesaid, That in every Case where a Writ of Summons to such Legislative Council shall have been lawfully withheld from any Person to whom such Hereditary Right as aforesaid shall have descended, by Reason of such Absence from the Province as aforesaid, or of his having taken an Oath of Allegiance or Obedience to any Foreign Prince or Power, and also in every Case where the Seat in such Council of any Member thereof, having such Hereditary Right as aforesaid, shall have been vacated by Reason of any of the Causes herein-before specified, such Hereditary Right shall remain suspended during the Life of such Person, unless His Majesty, His Heirs or Successors, shall afterwards think fit to direct that he be summoned to such Council; but that on the Death of such Person such Right, subject to the Provisions herein contained, shall descend to the Person who shall next be entitled thereto, according to the Course of Descent limited in the Letters Patent by which the same shall have been originally conferred.

Seats in Council forfeited, and Hereditary Rights extinguished, for Treason.

X. Provided also, and be it further enacted by the Authority aforesaid, That if any Member of either of the said Legislative Councils shall be attainted for Treason in any Court of Law within any of His Majesty's Dominions, his Seat in such Council shall thereby become vacant, and any such Hereditary Right as aforesaid then vested in such Person, or to be derived to any other Persons through him, shall be utterly forfeited and extinguished

Questions respecting the Right to be summoned to Council, &c. to be determined as herein mentioned.

XI. Provided also, and be it further enacted by the Authority aforesaid, That whenever any Question shall arise respecting the Right of any Person to be summoned to either of the said Legislative Councils respectively, or respecting the Vacancy of the Seat in such Legislative Council of any Person having been summoned thereto, every such Question shall, by the Governor or Lieutenant Governor of the Province, or by the Person administering the Government there, be referred to such Legislative Council, to be by the said Council heard and determined; and that it shall and may be lawful either for the Person desiring such Writ of Summons, or respecting whose Seat such Question shall have arisen, or for His Majesty's Attorney General of such Province in His Majesty's Name, to appeal from the Determination of the said Council, in such Case, to His Majesty in His Parliament of *Great Britain*; and that the Judgement thereon of His Majesty in His said Parliament shall be final and conclusive to all Intents and Purposes whatever.

The Governor of the Province may appoint and remove the Speaker.

XII. And be it further enacted by the Authority aforesaid, That the Governor or Lieutenant Governor of the said Provinces respectively, or the Person administering His Majesty's Government therein respectively, shall have Power and Authority from Time to Time, by an Instrument under the Great Seal of such Province, to constitute, appoint, and remove the Speakers of the Legislative Councils of such Provinces respectively.

His Majesty may authorize the Governor to call together the Assembly.

XIII. And be it further enacted by the Authority aforesaid, That, for the Purpose of constituting such Assembly as aforesaid, in each of the said Provinces respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual, to authorize and direct the Governor or Lieutenant Governor, or Person

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administering the Government in each of the said Provinces respectively, within the Time herein-after mentioned, and thereafter from Time to Time, as Occasion shall require, in His Majesty's Name, and by an Instrument under the Great Seal of such Province, to summon and call together an Assembly in and for such Province.

and, for the Purpose of electing the Members, to issue a Proclamation dividing the Province into Districts, &c.

XIV. And be it further enacted by the Authority aforesaid, That, for the Purpose of electing the Members of such Assemblies respectively, it shall and may be lawful for His Majesty, His Heirs or Successors, by an Instrument under His or their Sign Manual, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, within the Time hereinafter mentioned, to issue a Proclamation dividing such Province into Districts, or Counties, or Circles, and Towns or Townships, and appointing the Limits thereof, and declaring and appointing the Number of Representatives to be chosen by each of such Districts, or Counties, or Circles, and Towns or Townships respectively; and that it shall also be lawful for His Majesty, His Heirs or Successors, to authorize such Governor or Lieutenant Governor, or Person administering the Government, from Time to Time to nominate and appoint proper Persons to execute the Office of returning Officer in each of the said Districts, or Counties, or Circles, and Towns or Townships respectively; and that such Division of the said Provinces into Districts, or Counties, or Circles, and Towns or Townships, and such Declaration and Appointment of the Number of Representatives to be chosen by each of the said Districts, or Counties, or Circles, and Towns or Townships respectively, and also such Nomination and Appointment of Returning Officers in the same, shall be valid and effectual to all the Purposes of this Act, unless it shall at any Time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

Power of the Governor to appoint Returning Officers, to continue Two Years from the Commencement of this Act.

XV. Provided nevertheless, and be it further enacted by the Authority aforesaid, That the Provision herein-before contained, for impowering the Governor, Lieutenant Governor, or Person administering the Government of the said Provinces respectively, under such Authority as aforesaid from His Majesty, His Heirs or Successors, from Time to Time, to nominate and appoint proper Persons to execute the Office of Returning Officer in the said Districts, Counties, Circles, and Towns or Townships, shall remain and continue in Force in each of the said Provinces respectively, for the Term of Two Years, from and after the Commencement of this Act, within such Province, and no longer; but subject nevertheless to be sooner repealed or varied by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

No Person obliged to serve as Returning Officer more than Once, unless otherwise provided by an Act of the Province.

XVI. Provided always, and be it further enacted by the Authority aforesaid, That no Person shall be obliged to execute the said Office of Returning Officer for any longer Time than One Year, or oftener than Once, unless it shall at any Time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

Number of Members in each Province.

XVII. Provided also, and be it enacted by the Authority aforesaid, That the whole Number of Members to be chosen in the Province of *Upper Canada* shall not be less than Sixteen, and that the whole Number of Members to be chosen in the Province of *Lower Canada* shall not be less than Fifty.

Regulations for issuing Writs for the Election of Members to serve in the Assemblies.

XVIII. And be it further enacted by the Authority aforesaid, That Writs for the Election of Members to serve in the said Assemblies respectively shall be issued by the Governor, Lieutenant Governor, or Person administering His Majesty's Government within the said Provinces respectively, within Fourteen Days after the sealing of such Instrument as afore-

said for summoning and calling together such Assembly, and that such Writs shall be directed to the respective Returning Officers of the said Districts, or Counties, or Circles, and Towns or Townships, and that such Writs shall be made returnable within Fifty Days at farthest from the Day on which they shall bear Date, unless it shall at any Time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors; and that Writs shall in like Manner and Form be issued for the Election of Members in the Case of any Vacancy which shall happen by the Death of the Person chosen, or by his being summoned to the Legislative Council of either Province, and that such Writs shall be made returnable within Fifty Days at farthest from the Day on which they shall bear Date, unless it shall at any Time be otherwise provided by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors; and that in the Case of any such Vacancy which shall happen by the Death of the Person chosen, or by Reason of his being so summoned as aforesaid, the Writ for the Election of a new Member shall be issued within Six Days after the same shall be made known to the proper Office for issuing such Writs of Election.

Returning Officers to execute Writs.

XIX. And be it further enacted by the Authority aforesaid, That all and every the Returning Officers so appointed as aforesaid, to whom any such Writs as aforesaid shall be directed, shall, and they are hereby authorized and required duly to execute such Writs.

By whom the Members are to be chosen.

XX. And be it further enacted by the Authority aforesaid, That the Members for the several Districts, or Counties, or Circles of the said Provinces respectively, shall be chosen by the Majority of Votes of such Persons as shall severally be possessed, for their own Use and Benefit, of Lands or Tenements within such District, or County, or Circle, as the Case shall be, such Lands being by them held in Freehold, or in Fief, or in Roture, or by Certificate derived under the Authority of the Governor and Council of the Province of *Quebec*, and being of the yearly Value of Forty Shillings Sterling, or upwards, over and above all Rents and Charges payable out of or in respect of the same; and that the Members for the several Towns or Townships within the said Provinces respectively shall be chosen by the Majority of Votes of such Persons as either shall severally be possessed, for their own Use and Benefit, of a Dwelling House and Lot of Ground in such Town or Township, such Dwelling House and Lot of Ground being by them held in like Manner as aforesaid, and being of the yearly Value of Five Pounds Sterling, or upwards, or, as having been resident within the said Town or Township for the Space of Twelve Calendar Months next before the Date of the Writ of Summons for the Election, shall *bona fide* have paid One Year's Rent for the Dwelling House in which they shall have so resided, at the Rate of Ten Pounds Sterling *per Annum*, or upwards.

Certain Persons not eligible to the Assemblies.

XXI. Provided always, and be it further enacted by the Authority aforesaid, That no Person shall be capable of being elected a Member to serve in either of the said Assemblies, or of sitting or voting therein, who shall be a Member of either of the said Legislative Councils to be established as aforesaid in the said Two Provinces, or who shall be a Minister of the Church of *England*, or a Minister, Priest, Ecclesiastic, or Teacher, either according to the Rites of the Church of *Rome*, or under any other Form or Profession of Religious Faith or Worship.

No Person under 21 Years of Age, &c. capable of voting or being elected;

XXII. Provided also, and be it further enacted by the Authority aforesaid, That no Person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election, who shall not be of the full Age of Twenty-one Years, and a natural-born Subject of His Majesty, or a Subject of His

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Majesty naturalized by Act of the *British* Parliament, or a Subject of His Majesty, having become such by the Conquest and Cession of the Province of *Canada*.

nor any Person attainted for Treason or Felony.

XXIII. And be it also enacted by the Authority aforesaid, That no Person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election, who shall have been attainted for Treason or Felony in any Court of Law within any of His Majesty's Dominions, or who shall be within any Description of Persons disqualified by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

Voters, if required, to take the following

XXIV. Provided also, and be it further enacted by the Authority aforesaid, That every Voter, before he is admitted to give his Vote at any such Election, shall, if required by any of the Candidates, or by the Returning Officer, take the following Oath, which shall be administered in the *English* or *French* Language, as the Case may require:

Oath,

I. A. B. do declare and testify, in the Presence of Almighty God, That I am, to the best of my Knowledge and Belief, of the full Age of Twenty-one Years, and that I have not voted before at this Election.

and to make Oath to the Particulars herein specified.

And that every such Person shall also, if so required as aforesaid, make Oath, previous to his being admitted to vote, that he is, to the best of his Knowledge and Belief, duly possessed of such Lands and Tenements, or of such a Dwelling House and Lot of Ground, or that he has *bona fide* been so resident, and paid such Rent for his Dwelling House, as entitles him, according to the Provisions of this Act, to give his Vote at such Election for the County, or District, or Circle, or for the Town or Township for which he shall offer the same.

His Majesty may authorize the Governor to fix the Time and Place of holding Elections,

XXV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor, or Person administering the Government within each of the said Provinces respectively, to fix the Time and Place of holding such Elections, giving not less than Eight Days Notice of such Time, subject nevertheless to such Provisions as may hereafter be made in these Respects by any Act of the Legislative Council and Assembly of the Province, assented to by His Majesty, His Heirs or Successors.

and of holding the Sessions of the Council and Assembly, &c.

XXVI. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, to fix the Places and Times of holding the First and every other Session of the Legislative Council and Assembly of such Province, giving due and sufficient Notice thereof, and to prorogue the same from Time to Time, and to dissolve the same, by Proclamation or otherwise, whenever he shall judge it necessary or expedient.

Council and Assembly to be called together, Once in 12 Months, &c.

XXVII. Provided always, and be it enacted by the Authority aforesaid, That the said Legislative Council and Assembly, in each of the said Provinces, shall be called together Once at the least in every Twelve Calendar Months, and that every Assembly shall continue for Four Years from the Day of the Return of the Writs for chusing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the Governor or Lieutenant Governor of the Province, or Person administering His Majesty's Government therein.

and all Questions therein to be decided by the Majority of Votes.

XXVIII. And be it further enacted by the Authority aforesaid, That all Questions which shall arise in the said Legislative Councils or Assemblies respectively shall be decided by the Majority of Voices of such Members

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as shall be present; and that in all Cases where the Voices shall be equal, the Speaker of such Council or Assembly, as the Case shall be, shall have a casting Voice.

No Member to sit or vote till he has taken the following

XXIX. Provided always, and be it enacted by the Authority aforesaid, that no Member, either of the Legislative Council or Assembly, in either of the said Provinces, shall be permitted to sit or to vote therein until he shall have taken and subscribed the following Oath, either before the Governor or Lieutenant Governor of such Province, or Person administering the Government therein, or before some Person or Persons authorized by the said Governor or Lieutenant Governor, or other Person as aforesaid, to administer such Oath, and that the same shall be administered in the *English* or *French* Language, as the Case shall require:

Oath.

I A. B, do sincerely promise and swear, That I will be faithful, and bear true Allegiance to His Majesty King George, *as lawful Sovereign of the Kingdom of* Great Britain, *and of these Provinces dependant on and belonging to the said Kingdom; and that I will defend Him to the utmost of my Power against all traiterous Conspiracies and Attempts whatever which shall be made against His Person, Crown, and Dignity; and that I will do my utmost Endeavour to disclose and make known to His Majesty, His Heirs or Successors, all Treasons and traiterous Conspiracies and Attempts which I shall know to be against Him, or any of them: and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Person or Power whatever to the contrary.*

So help me GOD.

Governor may give or withhold His Majesty's Assent to Bills passed by the Legislative Council and Assembly, or reserve them for His Majesty's Pleasure.

XXX. And be it further enacted by the Authority aforesaid, That whenever any Bill which has been passed by the Legislative Council, and by the House of Assembly, in either of the said Provinces respectively, shall be presented, for His Majesty's Assent, to the Governor or Lieutenant Governor of such Province, or to the Person administering His Majesty's Government therein, such Governor or Lieutenant Governor, or Person administering the Government, shall, and he is hereby authorized and required to declare, according to his Discretion, but subject nevertheless to the Provisions contained in this Act, and to such Instructions as may from Time to Time be given in that Behalf by His Majesty, His Heirs or Successors, that he assents to such Bill in His Majesty's Name, or that he withholds His Majesty's Assent from such Bill, or that he reserves such Bill for the Signification of His Majesty's Pleasure thereon.

Governor to transmit to the Secretary of State Copies of such Bills as have been assented to, which His Majesty in Council may declare his Disallowance of within Two Years from the Receipt.

XXXI. Provided always, and be it further enacted by the Authority aforesaid, That whenever any Bill, which shall have been so presented for His Majesty's Assent to such Governor, Lieutenant Governor, or Person administering the Government, shall, by such Governor, Lieutenant Governor, or Person administering the Government, have been assented to in His Majesty's Name, such Governor, Lieutenant Governor, or Person as aforesaid, shall, and he is hereby required, by the first convenient Opportunity, to transmit to One of His Majesty's principal Secretaries of State an authentick Copy of such Bill so assented to; and that it shall and may be lawful, at any Time within Two Years after such Bill shall have been so received by such Secretary of State, for His Majesty, His Heirs or Successors, by His or their Order in Council, to declare His or their Disallowance of such Bill, and that such Disallowance, together with a Certificate, under the Hand and Seal of such Secretary of State, testifying the Day on which such Bill was received as aforesaid, being signified by such Governor, Lieutenant Governor, or Person administering the Government, to the Legislative Council and Assembly of such Province, or by Proclamation, shall make void and annul the same, from and after the Date of such Signification.

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Bills reserved for His Majesty's Pleasure not to have any Force till His Majesty's Assent be communicated to the Council and Assembly, &c.

XXXII. And be it further enacted by the Authority aforesaid, That no such Bill, which shall be so reserved for the Signification of His Majesty's Pleasure thereon, shall have any Force or Authority within either of the said Provinces respectively, until the Governor or Lieutenant Governor, or Person administering the Government, shall signify, either by Speech or Message, to the Legislative Council and Assembly of such Province, or by Proclamation, that such Bill has been laid before His Majesty in Council, and that His Majesty has been pleased to assent to the same; and that an Entry shall be made, in the Journals of the said Legislative Council, of every such Speech, Message, or Proclamation; and a Duplicate thereof, duly attested, shall be delivered to the proper Officer, to be kept amongst the publick Records of the Province: And that no such Bill, which shall be so reserved as aforesaid, shall have any Force or Authority within either of the said Provinces respectively, unless His Majesty's Assent thereto shall have been so signified as aforesaid, within the Space of Two Years from the Day on which such Bill shall have been presented for His Majesty's Assent to the Governor, Lieutenant Governor, or Person administering the Government of such Province.

Laws in Force at the Commencement of this Act to continue so, except repealed or varied by it, &c.

XXXIII. And be it further enacted by the Authority aforesaid, That all Laws, Statutes, and Ordinances, which shall be in Force on the Day to be fixed in the Manner herein-after directed for the Commencement of this Act, within the said Provinces, or either of them, or in any Part thereof respectively, shall remain and continue to be of the same Force, Authority, and Effect, in each of the said Provinces respectively, as if this Act had not been made, and as if the said Province of *Quebec* had not been divided; except in so far as the same are expressly repealed or varied by this Act, or in so far as the same shall or may hereafter, by virtue of and under the Authority of this Act, be repealed or varied by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the Legislative Councils and Assemblies of the said Provinces respectively, or in so far as the same may be repealed or varied by such temporary Laws or Ordinances as may be made in the Manner herein-after specified.

Establishment of a Court of Civil Jurisdiction in each Province.

XXXIV. And whereas by an Ordinance passed in the Province of *Quebec*, the Governor and Council of the said Province were constituted a Court of Civil Jurisdiction, for hearing and determining Appeals in certain Cases therein specified,[1] be it further enacted by the Authority aforesaid, That the Governor, or Lieutenant Governor, or Person administering the Government of each of the said Provinces respectively, together with such executive Council as shall be appointed by His Majesty for the Affairs of such Province shall be a Court of Civil Jurisdiction within each of the said Provinces respectively, for hearing and determining Appeals within the same, in the like Cases, and in the like Manner and Form, and subject to such Appeal therefrom, as such Appeals might before the passing of this Act have been heard and determined by the Governor and Council of the Province of *Quebec*; but subject nevertheless to such further or other Provisions as may be made in this Behalf, by any Act of the Legislative Council and Assembly of either of the said Provinces respectively, assented to by His Majesty, His Heirs or Successors.

14 *Geo.* III, Cap. 83, and

XXXV. And whereas, by the above-mentioned Act, passed in the Fourteenth Year of the Reign of His present Majesty, it was declared, That the Clergy of the Church of *Rome*, in the Province of *Quebec*, might hold, receive, and enjoy their accustomed Dues and Rights, with respect to such Persons only as should profess the said Religion; provided nevertheless, that it should be lawful for His Majesty, His Heirs or Successors, to make

[1] See "Ordinance for establishing Courts of Civil Judicature in the Province of Quebec." 1777; articles 4 and 5, p. 464.

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such Provision out of the rest of the said accustomed Dues and Rights, for the Encouragement of the Protestant Religion, and for the Maintenance and Support of a Protestant Clergy within the said Province, as he or they should from Time to Time think necessary and expedient:[1] And whereas by His Majesty's Royal Instructions, given under His Majesty's Royal Sign Manual on the Third Day of *January*, in the Year of our Lord One thousand seven hundred and seventy-five, to *Guy Carleton* Esquire, now Lord *Dorchester*, at that Time His Majesty's Captain General and Governor in Chief in and over His Majesty's Province of *Quebec*, His Majesty was pleased, amongst other Things, to direct, "That no Incumbent professing the "Religion of the Church of *Rome*, appointed to any Parish in the said "Province, should be entitled to receive any Tythes for Lands or Possessions "occupied by a Protestant, but that such Tythes should be received by "such Persons as the said *Guy Carleton* Esquire, His Majesty's Captain "General and Governor in Chief in and over His Majesty's said Province "of *Quebec*, should appoint, and should be reserved in the Hands of His "Majesty's Receiver General of the said Province, for the Support of a "Protestant Clergy in His Majesty's said Province, to be actually resident "within the same, and not otherwise, according to such Directions as the "said *Guy Carleton* Esquire, His Majesty's Captain General and Governor "in Chief in and over His Majesty's said Province, should receive from His "Majesty in that Behalf; and that in like Manner all growing Rents and "Profits of a vacant Benefice should, during such Vacancy, be reserved for "and applied to the like Uses:"[2] And whereas His Majesty's Pleasure has likewise been signified to the same Effect in His Majesty's Royal Instructions, given in like Manner to Sir *Frederick Haldimand* Knight of the Most Honourable Order of the Bath, late His Majesty's Captain General and Governor in Chief in and over His Majesty's said Province of *Quebec*;[3] and also in His Majesty's Royal Instructions, given in like Manner to the said Right Honourable *Guy* Lord *Dorchester*, now His Majesty's Captain General and Governor in Chief in and over His Majesty's said Province of *Quebec*;[4] be it enacted by the Authority aforesaid, That the said Declaration and Provision contained in the said above-mentioned Act, and also the said Provision so made by His Majesty in consequence thereof, by His Instructions above recited, shall remain and continue to be of full Force and Effect in each of the said Two Provinces of *Upper Canada* and *Lower Canada* respectively, except in so far as the said Declaration or Provisions respectively, or any Part thereof, shall be expressly varied or repealed by any Act or Acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively, and assented to by His Majesty, His Heirs or Successors, under the Restriction herein-after provided.

Instructions of *Jan.* 3, 1775, to Sir *Guy Carleton*, &c. and Instructions to Sir *Frederick Haldimand*, and to Lord *Dorchester*, recited; and the Declaration and Provisions therein respecting the Clergy of the Church of *Rome* to continue in force.

XXXVI. And whereas His Majesty has been graciously pleased, by Message to both Houses of Parliament,[5] to express His Royal Desire to be enabled to make a permanent Appropriation of Lands in the said Provinces, for the Support and Maintenance of a Protestant Clergy within the same, in Proportion to such Lands as have been already granted within the same by His Majesty: And whereas His Majesty has been graciously pleased, by His said Message, further to signify His Royal Desire that such Provision may be made, with respect to all future Grants of Land within the said Provinces respectively, as may best conduce to the due and sufficient Sup-

His Majesty's Message to Parliament recited.

[1] See Quebec Act, p. 403.
[2] See Instructions to Governor Carleton, 1775, art. 21, sec. 5, p. 426.
[3] Haldimand received in 1778 the same Instructions as those given to Carleton in 1775. See p. 474.
[4] See Instructions to Lord Dorchester, 1786, art. 21, sec. 5, p. 557.
[5] See the King's message to Parliament respecting Quebec; Feb. 25, 1791. Hansard, vol. 28, p. 1271. The second part of the message relates to the establishing of the Clergy Reserves.

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port and Maintenance of a Protestant Clergy within the said Provinces, in Proportion to such Increase as may happen in the Population and Cultivation thereof: Therefore, for the Purpose of more effectually fulfilling His Majesty's gracious Intentions as aforesaid, and of providing for the due Execution of the same in all Time to come, be it enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, to make, from and out of the Lands of the Crown within such Provinces, such Allotment and Appropriation of Lands, for the Support and Maintenance of a Protestant Clergy within the same, as may bear a due Proportion to the Amount of such Lands within the same as have at any Time been granted by or under the Authority of His Majesty: And that whenever any Grant of Lands within either of the said Provinces shall hereafter be made, by or under the Authority of His Majesty, His Heirs or Successors, there shall at the same Time be made, in respect of the same, a proportionable Allotment and Appropriation of Lands for the above-mentioned Purpose, within the Township or Parish to which such Lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as Circumstances will admit; and that no such Grant shall be valid or effectual unless the same shall contain a Specification of the Lands so allotted and appropriated, in respect of the Lands to be thereby granted; and that such Lands, so allotted and appropriated, shall be, as nearly as the Circumstances and Nature of the Case will admit, of the like Quality as the Lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the Time of making such Grant, equal in Value to the Seventh Part of the Lands so granted.

His Majesty may authorize the Governor to make Allotments of Lands for the Support of a Protestant Clergy in each Province:

XXXVII. And be it further enacted by the Authority aforesaid, That all and every the Rents, Profits or Emoluments, which may at any Time arise from such Lands so allotted and appropriated as aforesaid, shall be applicable solely to the Maintenance and Support of a Protestant Clergy within the Province in which the same shall be situated, and to no other Use or Purpose whatever.

and the Rents arising from such Allotments to be applicable to that Purpose solely.

XXXVIII. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the Person administering the Government therein, from Time to Time, with the Advice of such Executive Council as shall have been appointed by His Majesty, His Heirs or Successors, within such Province, for the Affairs thereof, to constitute and erect, within every Township or Parish which now is or hereafter may be formed, constituted, or erected within such Province, One or more Parsonage or Rectory, or Parsonages or Rectories, according to the Establishment of the Church of *England*; and from Time to Time, by an Instrument under the Great Seal of such Province, to endow every such Parsonage or Rectory with so much or such Part of the Lands so allotted and appropriated as aforesaid, in respect of any Lands within such Township or Parish, which shall have been granted subsequent to the Commencement of this Act, or of such Lands as may have been allotted and appropriated for the same Purpose, by or in virtue of any Instruction which may be given by His Majesty, in respect of any Lands granted by His Majesty before the Commencement of this Act, as such Governor, Lieutenant Governor, or Person administering the Government, shall, with the Advice of the said Executive Council, judge to be expedient under the then existing Circumstances of such Township or Parish.

His Majesty may authorize the Governor, with the Advice of the Executive Council, to erect Parsonages, and endow them;

and the Governor to present Incumbents to them, who are to enjoy the same, as Incumbents in *England*.

XXXIX. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, His Heirs or Successors, to authorize the Governor, Lieutenant Governor, or Person administering the Government of each of the said Provinces respectively, to present to every such Parsonage or Rectory an Incumbent or Minister of the Church of *England*, who shall have been duly ordained according to the Rites of the said Church, and to supply from Time to Time such Vacancies as may happen therein; and that every Person so presented to any such Parsonage or Rectory, shall hold and enjoy the same, and all Rights, Profits, and Emoluments thereunto belonging or granted, as fully and amply, and in the same Manner, and on the same Terms and Conditions, and liable to the Performance of the same Duties, as the Incumbent of a Parsonage or Rectory in *England*.

Presentations to Parsonages, and the Enjoyment of them, to be subject to the Jurisdiction granted to the Bishop of *Nova Scotia*, *&c*.

XL. Provided always, and be it further enacted by the Authority aforesaid, That every such Presentation of an Incumbent or Minister to any such Parsonage or Rectory, and also the Enjoyment of any such Parsonage or Rectory, and of the Rights, Profits, and Emoluments thereof, by any such Incumbent or Minister, shall be subject and liable to all Rights of Institution, and all other Spiritual and Ecclesiastical Jurisdiction and Authority, which have been lawfully granted by His Majesty's Royal Letters Patent to the Bishop of *Nova Scotia*,[1] or which may hereafter, by His Majesty's Royal Authority, be lawfully granted or appointed to be administered and executed within the said Provinces, or either of them respectively, by the said Bishop of *Nova Scotia*, or any other Person or Persons, according to the Laws and Canons of the Church of *England*, which are lawfully made and received in *England*.

Provisions respecting the Allotment of Lands for the Support of a Protestant Clergy, *&c*. may be varied or repealed by the Legislative Council and Assembly.

XLI. Provided always, and be it further enacted by the Authority aforesaid, That the several Provisions herein-before contained, respecting the Allotment and Appropriation of Lands for the Support of a Protestant Clergy within the said Provinces, and also respecting the constituting, erecting, and endowing Parsonages and Rectories within the said Provinces, and also respecting the Presentation of Incumbents or Ministers to the same, and also respecting the Manner in which such Incumbents or Ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express Provisions for that Purpose, contained in any Act or Acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively, and assented to by His Majesty, His Heirs or Successors, under the Restriction herein-after provided.

Acts of the Legislative Council and Assembly, containing Provisions to the Effect herein mentioned to be laid before Parliament, previous to receiving His Majesty's Assent, *&c*.

XLII. Provided nevertheless, and be it further enacted by the Authority aforesaid, That whenever any Act or Acts shall be passed by the Legislative Council and Assembly of either of the said Provinces, containing any Provisions to vary or repeal the above-recited Declaration and Provision contained in the said Act passed in the Fourteenth Year of the Reign of His present Majesty; or to vary or repeal the above-recited Provision contained in His Majesty's Royal Instructions, given on the Third Day of *January*, in the Year of our Lord One thousand seven hundred and seventy-five, to the said *Guy Carleton* Esquire, now Lord *Dorchester*; or to vary or repeal the Provisions herein-before contained for continuing the Force and Effect of the said Declaration and Provisions; or to vary or repeal any of the several Provisions herein-before contained respecting the Allotment and Appropriation of Lands for the Support of a Protestant Clergy within the said Provinces; or respecting the constituting, erecting, or endowing Parsonages or Rectories within the said Provinces; or respecting the Presentation of Incumbents or Ministers to the same; or

[1] See Instructions to Lord Dorchester of Aug. 25th, 1787, giving the Bishop of Nova Scotia ecclesiastical jurisdiction throughout British North America. p. 568.

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respecting the Manner in which such Incumbents or Ministers shall hold and enjoy the same: And also that whenever any Act or Acts shall be so passed, containing any Provisions which shall in any Manner relate to or affect the Enjoyment or Exercise of any Religious Form or Mode of Worship; or shall impose or create any Penalties, Burthens, Disabilities, or Disqualifications in respect of the same; or shall in any Manner relate to or affect the Payment, Recovery, or Enjoyment of any of the accustomed Dues or Rights herein-before mentioned; or shall in any Manner relate to the granting, imposing, or recovering any other Dues, or Stipends, or Emoluments whatever, to be paid to or for the Use of any Minister, Priest, Ecclesiastick, or Teacher, according to any Religious Form or Mode of Worship, in respect of his said Office or Function; or shall in any Manner relate to or affect the Establishment or Discipline of the Church of *England*, amongst the Ministers and Members thereof within the said Provinces; or shall in any Manner relate to or affect the King's Prerogative touching the granting the Waste Lands of the Crown within the said Provinces; every such Act or Acts shall, previous to any Declaration or Signification of the King's Assent thereto, be laid before both Houses of Parliament in *Great Britain*; and that it shall not be lawful for His Majesty, His Heirs or Successors, to signify His or their Assent to any such Act or Acts, until Thirty Days after the same shall have been laid before the said Houses, or to assent to any such Act or Acts, in case either House of Parliament shall, within the said Thirty Days, address His Majesty, His Heirs or Succesors, to withhold His or their Assent from such Act or Acts; and that no such Act shall be valid or effectual to any of the said Purposes, within either of the said Provinces, unless the Legislative Council and Assembly of such Province shall, in the Session in which the same shall have been passed by them, have presented to the Governor, Lieutenant Governor, or Person administering the Government of such Province, an Address or Addresses, specifying that such Act contains Provisions for some of the said Purposes herein-before specially described, and desiring that, in order to give Effect to the same, such Act should be transmitted to *England* without Delay, for the Purpose of being laid before Parliament previous to the Signification of His Majesty's Assent thereto.

Lands in *Upper Canada* to be granted in Free and Common Soccage, and also in *Lower Canada* if desired.

XLIII. And be it further enacted by the Authority aforesaid, That all Lands which shall be hereafter granted within the said Province of *Upper Canada* shall be granted in Free and Common Soccage, in like Manner as Lands are now holden in Free and Common Soccage, in that Part of *Great Britain* called *England*; and that in every Case where Lands shall be hereafter granted within the said Province of *Lower Canada*, and where the Grantee thereof shall desire the same to be granted in Free and Common Soccage, the same shall be so granted; but subject nevertheless to such Alterations, with respect to the Nature and Consequences of such Tenure of Free and Common Soccage, as may be established by any Law or Laws which may be made by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the Legislative Council and Assembly of the Province.

Persons holding Lands in *Upper Canada* may have fresh Grants.

XLIV. And be it further enacted by the Authority aforesaid, That if any Person or Persons holding any Lands in the said Province of *Upper Canada*, by virtue of any Certificate of Occupation derived under the Authority of the Governor and Council of the Province of *Quebec*, and having Power and Authority to alienate the same, shall at any Time, from and after the Commencement of this Act, surrender the same into the Hands of His Majesty, His Heirs or Successors, by Petition to the Governor or Lieutenant Governor, or Person administering the Government of the said Province, setting forth that he, she, or they is or are desirous of holding the

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same in Free and Common Soccage, such Governor or Lieutenant Governor, or Person administering the Government, shall thereupon cause a fresh Grant to be made to such Person or Persons of such Lands, to be holden in Free and Common Soccage.

Such fresh Grants, not to bar any Right or Title to the Lands.

XLV. Provided nevertheless, and be it further enacted by the Authority aforesaid, That such Surrender and Grant shall not avoid or bar any Right or Title to any such Lands so surrendered, or any Interest in the same, to which any Person or Persons, other than the Person or Persons surrendering the same, shall have been entitled, either in Possession, Remainder, or Reversion, or otherwise, at the Time of such Surrender; but that every such Surrender and Grant shall be made subject to every such Right, Title, and Interest, and that every such Right, Title, or Interest shall be as valid and effectual as if such Surrender and Grant had never been made.

18 *Geo.* III, Cap. 12, recited.

XLVI. And whereas by an Act passed in the Eighteenth Year of the Reign of His present Majesty, intituled, *An Act for removing all Doubts and Apprehensions concerning Taxation by the Parliament of* Great Britain, *in any of the Colonies, Provinces, and Plantations in* North America, *and the* West Indies; *and for repealing so much of an Act, made in the Seventh Year of the Reign of His present Majesty, as imposes a Duty on Tea imported from* Great Britain *into any Colony or Plantation in* America, *or relates thereto* it has been declared, "That the King and Parliament of *Great Britain* will not impose any Duty, Tax, or Assessment "whatever, payable in any of His Majesty's Colonies, Provinces, and Plan- "tations in *North America* or the *West Indies*, except only such Duties as "it may be expedient to impose for the Regulation of Commerce, the Net "Produce of such Duties to be always paid and applied to and for the Use "of the Colony, Province, or Plantation in which the same shall be respect- "ively levied, in such Manner as other Duties collected by the Authority "of the respective General Courts or General Assemblies of such Colonies, "Provinces, or Plantations, are ordinarily paid and applied:"[1] And whereas it is necessary, for the general Benefit of the *British* Empire, that such Power of Regulation of Commerce should continue to be exercised by His Majesty, His Heirs or Successors, and the Parliament of *Great Britain*; subject nevertheless to the Condition herein-before recited, with respect to the Application of any Duties which may be imposed for that Purpose: Be it therefore enacted by the Authority aforesaid, That nothing in this Act contained shall extend, or be construed to extend, to prevent or affect the Execution of any Law which hath been or shall at any Time be made by His Majesty, His Heirs or Successors, and the Parliament of *Great Britain*, for establishing Regulations of Prohibitions, or for imposing, levying, or collecting Duties for the Regulation of Navigation, or for the Regulation of the Commerce to be carried on between the said Two Provinces, or between either of the said Provinces and any other Part of His Majesty's Dominions, or between either of the said Provinces and any Foreign Country or State, or for appointing and directing the Payment of Drawbacks of such Duties so imposed, or to give to His Majesty, His Heirs or Successors, any Power or Authority, by and with the Advice and Consent of such Legislative Councils and Assemblies respectively, to vary or repeal any such Law or Laws, or any Part thereof, or in any Manner to prevent or obstruct the Execution thereof.

This Act not to prevent the Operation of any Act of Parliament, establishing Prohibitions or imposing Duties for the Regulation of Navigation and Commerce, *etc.*

Such Duties to be applied to the Use of the respective Provinces.

XLVII. Provided always, and be it enacted by the Authority aforesaid, That the Net Produce of all Duties which shall be so imposed shall at all Times hereafter be applied to and for the Use of each of the said Provinces respectively, and in such Manner only as shall be directed by any

[1] See Statutes at Large, vol. 32, p. 4.

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Law or Laws which may be made by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the Legislative Council and Assembly of such Province.

His Majesty in Council to fix and declare the Commencement of this Act, &c.

XLVIII. And whereas, by Reason of the Distance of the said Provinces from this Country, and of the Change to be made by this Act in the Government thereof, it may be necessary that there should be some Interval of Time between the Notification of this Act to the said Provinces respectively, and the Day of its Commencement within the said Provinces respectively: Be it therefore enacted by the Authority aforesaid, That it shall and may be lawful for His Majesty, with the Advice of His Privy Council, to fix and declare, or to authorize the Governor or Lieutenant Governor of the Province of *Quebec*, or the Person administering the Government there, to fix and declare the Day of the Commencement of this Act within the said Provinces respectively, provided that such Day shall not be later than the Thirty-first Day of *December* in the Year of our Lord One thousand seven hundred and ninety-one.

Time for issuing the Writs of Summons and Election, &c. not to be later than *Dec.* 31, 1792.

XLIX. And be it further enacted by the Authority aforesaid, That the Time to be fixed by His Majesty, His Heirs or Successors, or under his or their Authority, by the Governor, Lieutenant Governor, or Person administering the Government in each of the said Provinces respectively, for issuing the Writs of Summons and Election, and calling together the Legislative Councils and Assemblies of each of the said Provinces respectively, shall not be later than the Thirty-first Day of *December* in the Year of our Lord One thousand seven hundred and ninety-two.

Between the Commencement of this Act, and the First Meeting of the Legislative Council and Assembly, temporary Laws may be made.

L. Provided always, and be it further enacted by the Authority aforesaid, That during such Interval as may happen between the Commencement of this Act, within the said Provinces respectively, and the First Meeting of the Legislative Council and Assembly of each of the said Provinces respectively, it shall and may be lawful for the Governor or Lieutenant Governor of such Province, or for the Person administering the Government therein, with the Consent of the major Part of such Executive Council as shall be appointed by His Majesty for the Affairs of such Province, to make temporary Laws and Ordinances for the good Government, Peace, and Welfare of such Province, in the same Manner, and under the same Restrictions, as such Laws or Ordinances might have been made by the Council for the Affairs of the Province of *Quebec*, constituted by virtue of the abovementioned Act of the Fourteenth Year of the Reign of His present Majesty; and that such temporary Laws or Ordinances shall be valid and binding within such Province, until the Expiration of Six Months after the Legislative Council and Assembly of such Province shall have been first assembled by virtue of and under the Authority of this Act; subject nevertheless to be sooner repealed or varied by any Law or Laws which may be made by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the said Legislative Council and Assembly.

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